



Here JENKINS stands, who thundring from the TOWER  
Shook the bold Senats Legislative Power,  
Six of whose words twelve Reames of votes exceed  
As mountaines mov'd by graines of mustard-seed.  
These gasping Lawes were rescu'd from the Snare.  
He that will save a Crowne must know and dare:  
J. Berkenhead.



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JENKINSIUS REDIVIVUS:  
OR THE  
VVORKS

OF THAT  
*Grave, Learned, Truly-Loyal,*  
*and Courageous.*

Judge JENKINS,  
WHILST

*A Prisoner in the Tower, and Newgate,*  
*by Command of the Rebellious-Long-Parlia-*  
*ment, began at Westminster, Nov. 3. 1640.*

Wherein is plainly set forth, the *Just*  
*Power and Prerogative of the King, the Pri-*  
*viledge of Parliament, the Liberty of the*  
*Subject, and what is Treason according to*  
*the Laws of the Land.*

Very seasonable to be Perused, by all  
such, as would not be Deluded by the Un-  
parallel'd *Arbitrary Proceedings, and Sediti-*  
*ous Pamphlets of this Licentious and Ingrate-*  
*ful Age.*

---

*Plebs sine Lege Ruit.*

---

LONDON, Printed for Jo. Hindmarsh at  
the *Black Bull* in Cornhill. 1681.

# V.V.O.R.K.S

OF THE  
CANTONMENT, JALPAIGURI

THE  
JALPAIGURI

WILLIAM  
A. JALPAIGURI

THE  
JALPAIGURI

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JALPAIGURI

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JALPAIGURI

20,3401



THE  
JALPAIGURI

LONDON, Printed for the  
the Great Hall in Cambridge, 1821



TO THE  
Honourable Societies  
OF  
GRAYES INN,  
AND

Of the rest of the Innes of  
Court, and to all the  
Professors of the Law.

**I** Have now spent Fourty  
five years in the Study  
of the Lawes of this Land,  
being my profession; under and  
by

## EPISTLE

by the conduct of which Laws,  
this Commowealth hath flour-  
ished for some Ages past in great  
splendour and happinesse. ( Jam  
seges est ubi Troja fuit. )

The great and full body of this  
Kingdom hath of late years  
fallen into an extream sick-  
ness: it is truly said, that the  
cause of the disease being known,  
the disease is easily cured. There  
is none of you, I hope, but doth  
heartily wish the recovery of  
our common parent, our native

countrie ( Moribus antiquis  
stat res Britanica. ) I call  
god to witness that this dis-  
course of mine hath no other  
end than my wishes of the  
common good: how far I have  
been from Ambition, my life  
past, and your own knowledge  
of me, can abundantly inform  
you: His sacred Majesty: ( God  
is my witness, made me a Judge  
in

## DEDICATORY.

*in the parts of Wales against my will, and all the meanes I was able to make; and a patent for my place was sent me, for the which I have not paid one farthing, and the place is of so inconsiderable a benefit, that it is worth but 80.l. per Annum when paid, and it cost me every year I served, twice as much out of my own estate, in the way of an ordinery and frugall expence. That which gave me comfort was that I knew well that his Majesty was a just and a prudent Prince.*

*In the time of the Atturney-ships of Master Noy and the Lord Banks, they were pleased to make often use of me, and many references concerning suits at Court upon that occasion came to my knowledge; and as I shall answer to God upon my last account*

## EPISTLE

count this is truth, that all or most of the references which I have seen in that kind ( and I have seen many ) were to this effect, that his Majesty would be informed by his Councell if the suits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would pass them. [ What could a just and pious Prince do more ? ] Gentlemen, you shall find the Cause and the Cure of the present great distemper in this Discourse ; and God prosper it in your hands, thoughts, and words, as the case deserves.

Hold to the Lawes, this great body recovers ; forsake them, it will certainly perish. I have resolved to tender my self a Sacrifice to them  
as

## DEDICATORY.

*as chearfully, and I hope  
( by Gods assistance ) as con-  
stantly as old Eleazer did  
for the holy Lawes of his  
Nation.*

Your Well-wisher,

DAVID JENKINS

Now Prisoner in the Tower.

---

*Lex.*







THE  
TABLE.

---

The Law of the Land.

**T**He Law of the Land hath for its  
ground ;

1. Custome.
2. Judicial Records.
3. Acts of Parliament.

The two latter being Declarations of  
the Common Law, and Custome of the  
Realm. Page 1. 19. 21.

The Law of Royal Government is  
Law Fundamental. p. 1.

The

## The Table.

*The Kings Prerogative, and the Subjects Liberty, are determined and bounded by the Law.* p. 134.

*The King claims no Power but by the Law of the Land.* ibid.

*The Law the only Rule and Direction of the Subject in this present War.*

P. 43. 144.

*Ubi Lex non distinguit, ibi non est distinguendum.* p. 145.

## The King.

**T**He King of England hath his Title to the Crown, and to his Kingly Office and Power, not by way of trust, from the two Houses of Parliament or from the people, but by Inherent Birthright from God, Nature, and the Law. p. 22, 23, 38. 54, 55, 56, 58, 59.

*There was never King Deposed, but in tumultuous and mad times, and by the power of the Armies, and they who are to be the succeeding Kings, in the Head of them, as Ed. 3. and Hen. 4.*

P. 56.

*Usurpers were Kings de facto, not de jure.* ibid.

The

## The Table.

*The King is assisted, by the Advice of the Judges, his Counsel at Law, Solicitors, Attorney, Masters of Chancery, and Council of State, hence the Law hath settled several Powers in the King.* p.26,27.

*The Kings of England enjoyed that Power in a full measure in King John's time.* p.2,3,4.

*How rights of Sovereignty continued in Practise from Hen. 3d. to 1640.*

p.3.

*The Kings Power not separable from his Person.* p.74,75.

*The Body Natural and Politick in the King make but one Body.*

p.19.39.75.

*Every Subject swears homage to the King.* p.4.

*The Law gives reverence to the person of the King.* p.7.

*Foul-mouth'd Pamphlets against the King Condemned.* p.19.

*The Supream Power is in the King.*

p.3.10,11.59,60.

*The Oath of Supremacy in relation to the Parliament.* p.71,72.

*The King is Supream in Ecclesiastical Causes.* p.7.

## The Table.

*The King the only Supream Governour, and all other Persons have their Power from him by his Writ, Patent, or Commission.* p.18,19,20,

36, 37, and 68, 69.

*The power of the Militia is in the King.* p.4.37.

*In the time of Parliament.* p.5.

*The Commission of Array in force.*

p.10.37.

*The power of making League with Foreigners is in the King.* p.12.14.

*The power of War in the King.*

p.18,19.

*The power of making Officers in the King.* p.4.

*The King only hath power to make Justices of Peace, and of Assize.*

p.46.96.134.

*The power of Coynage in the King.*

p.4.

*The power of pardoning only in the King, by Law.* p.4.71.78.82.90,141.

*The King hath power to remove the Courts at Westminster.* p.46.

*The King can do no wrong, but his Judges, Counsellors, and Ministers may.*

p.15.42.

## The Table.

*So long as Men manage the Laws,  
they will be broken more, or less.*  
p.28.

## Treason.

**I**N the Reign of Ed. 2d. the Spencers, the Father and the Son, to cover their Treason, hatched in their Hearts, invented this damnable and damned Opinion, that Homage, and Oath of Allegiance, was more by reason of the Kings Crown (that is his politick capacity) than by reason of his person; upon which opinion they inferred three execrable and detestable consequences.

First, If the King do not demean himself, by reason in the right of his Crown, his Leiges are bound by Oath to remove the King.

Secondly, Seeing the King could not be reformed by Suit of Law, that ought to be done per asper te, that is by force.

Thirdly, his Leiges be bound to Govern in ayd of him, and in default of him.

p.6.74.

Several Treasons by the Statute 25.  
Ed.3.

p.9,10,11,12,13,81.

a. 2

The

## The Table.

*The Word King in the 25 Edw. 3. must be understood of the Kings Natural person.* p.8,9,82.

*Other Treasons not Specified in that Act are declared to be no Treasons, untill the King and his Parliament shall declare otherwise.* p.81,98.

*To seize the Kings Forts, Ports, Magazine of War, is High-Treason.* p.8.21,38,82.

*To remove Counsellors by Arms, is High-Treason.* p.20,40.

*To Levy War to alter Religion is High-Treason.* p.50.

*To Levy War to alter the Law, is High-Treason.* p.8,40,82.

*To counterfeit the Great Seal, is High-Treason.* p.38.

*To adhere to any State within the Kingdom, but the Kings Majesty, is High-Treason.* p.22.40.

*To Imprison the King untill he agree to certain Demands is High-Treason.* p.8.20.82.

*They who Imprison the King purpose to destroy him.* p.163.

*Deposers of the King Adjudged Traitors by the Law of the Land.* p.56.

## The Table.

*A Body corporate cannot commit Treason, but the persons can.* p.13.

*Noble Men committing Treason, forfeit their Office and Dignity.* p.158.

*Treason how punished by the Law.* p.43.

*Treason doth ever produce fatal Destruction to the Offender and never attains to the desired end : And there are two Incidents inseparable thereunto.* p.148.

## A Parliament.

**T***He Word Parliament cometh from the French Word Parler, to Treat.* p.85.

*The King is Principium, Caput, & Finis, Parl.* p.25.49.125.

*The King Assembles the Parliament by his Writ, Adjourns, Prorogues, and Dissolves the Parliament, by the Law, at his pleasure.* p.59.

*The Writ whereby the King Assembled the two Houses, which is called the Writ of Summons, at all times, and at this Parliament used, and which is the warrant, ground, and foundation of their meeting, is, for the Lords of the*  
a 3 *House*

## The Table.

*House of Peers, to consult and treat with the King (that is the Parler) of great concernments, touching;*

1. *The King.*

2. *The defence of this Kingdom.*

3. *The defence of the Church of England.* p.22.24.34.86.123,124.

*Council is not to Command, Counsellors are not Commanders.* p.25.

*The Writ of Summoning the Judges, Counsel of Law, and 12 Masters of Chancery, is to appear, and attend the Parliament, to give Counsel.*

p.118.

*The Writ of Summoning the Commons, is to do, and to consent to such things, which shall happen to be ordained by Common Counsel there (viz.) in the Parliament.* p.24,25.117.

*The Parliament is a Corporation composed of the King the Head, and the Lords and Commons, the Subject Body.*

p.1.17,18.51,52,84,  
125.157,161,162.

*And it hath power over our Lives, Liberties, Laws, and Goods.*

p.120.

*The*



## The Table.

*The Court of Parliament is only in the House of Lords, where the King Sits in person.* p. 118. 125, 159.

*The Office of the Lords, is to Counsel the King in time of Peace, and to defend him in time of War.* p. 138. 157.

*It belongs to the House of Lords, to reform Erroneous Judgments given in the Kings Bench, to redress the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their Counsel, to have their Votes in Voting, or abrogating of Laws, and to propose for the common good, what they conceive meet.* p. 33.

*How Errors in judgment are reversed by the House of Lords.* p. 57.

*At a conference, the Commons are always uncovered and stand, when the Lords sit with their hats on; which shews that they are not Collegues in judgment with the Lords.* p. 156.

*Every Member of the House of Commons takes the Oath of Allegiance and Supremacy before his Admission into the House.* p. 72.

*Briberies, Extortions, Monopolies, ought to be enquired after by the House of Commons, and complained of to the*  
a. 4. King

## The Table.

King and Lords.

P 152.

*It belongs to the House of Commons to represent the Grievances of the Countrey, to grant Ayds for the King, upon all fit occasions extraordinary, to Assent to the making of or abrogating Laws.*

P. 33. 116.

*Because making of new, and abrogating of old Laws both induce Novelties: And because Bills in both Houses may pass, but by one or two Voices, or very few, and perhaps of no judicious Men (who oftentimes carry it by making the Major part, which Involves the consent of all) therefore the Law makes the King, assisted therein by a great number of Grave, Learned, and Prudent Men, the Judge of those Bills, whether they be necessary for the publick good, or no.*

P. 32, 33. 55. 59.

*And the King upon all Bills, hath Liberty of Assenting or Dissenting.*

P. 16. 27. 39. 53.

*And in case of the Kings Minority, the Protector hath his Liberty, and Negative Voice in respect of the King.*

P. 54.

*The Stiles of the Acts Printed from 9. Hen. 3. to 1 Hen. 7. were either the King*

## The Table.

King Ordains at his Parliament, &c.  
Or the King Ordaineth by the Advice of his Prelates and Barons, and at the Humble Petition of the Commons, &c.

*In Hen. 7. time the Stile was altered, and hath so continued to this day.*

*No Act of Parliament binds the Subject, without the Assent of the King.* p. 76.

*When an Act of Parliament is against common right, or reason, or repugnant or impossible to be performed, the common Law shall controule it, and adjudge it to be void. And such is an Act for a perpetual Parliament.*

p. 132.

*An Act of Parliament, that a Man shall be Judge in his own cause, is a void Act.* ibid.

*An Adjournment of the Parliament makes no Session.* p. 143.

*There is no Session till a Prorogation, or Dissolution of the Parliament.*

p. 144.

*All the Acts of one Session relate to the first day of the Parliament.* ibid.

## The Table.

*The two Houses ought to take care of the preservation of the Kings Person.*

P. 15.

*The Lords and Commons cannot Assent to any thing that tends to the disinherison of the King, and his Crown, to which they are Sworn.*

p. 8.

*The two Houses ought not to meddle with the Kings Revenue.*

ibid.

*Arms are not to be born in London, or Westminster, in time of Parliament.*

P. 5. 40.

*The priviledge of Parliament protects no Man in case of Treason or Felony.*

P. 12, 13.

*Parliaments are as the times are: If a turbulent Faction prevails, the Parliament are wicked, if the times be Sober, Modest, Prudent, and not byassed, the Parliament are Right, Good, Honourable, and good Medicines and Salves.*

P. 42.

## The present Parliament.

**T**His Parliament began 3. Novem. 1640. And in the beginning thereof the King acquitted the Ship-Money, Knight-hood-Money, seven Courts.

## The Table.

Courts of Justice, consented to a Triennial Parliament, settled the Forrest Bounds, took away the Clark of the Market, of the Household, trusted the Houses with the Navy, passed an Act not to Dissolve this Parliament without the Houses Assent: No People in the World so free, if they could have been content with Laws, Oaths, and Reason, and nothing more could, nor can be devised to serve us, neither hath been in any time before. P. 34.

Notwithstanding all this (Jan. 10. 1641.) the King was driven away from London by frequent Tumults, and two thirds and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons left that House also for the same reason: New Men chosen in their places, against Law, by the pretended Warrant of a Counterfeit Seal, and in the Kings name, against his consent, Levying War against him, and seizing his Forts, Ports, Magazines, and Revenue, and converting them to his Destruction, and the Subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land,

## The Table.

*Land, devising new Oaths, to oppose the Forces raised by the King, &c.*

P.35.

*From the 3d. Nov. 1640. unto Jan. 10. 1641. they had time to persecute all evil Counsellors and Judges.* P.15.41.

*From that time the King was driven away, the two houses stood in Opposition to the King and his Power.* P.35.

*This became no Parliament when the King, with whom they should parley, was driven away, and it continues so, whilst his Majesty is restrained as a Prisoner.* P.35.85.

*And the houses now severed from the King have no Power at all, no more than the body hath, being severed from the head.* P.84.

*The two houses do not act by the Kings Writ, but contrary to it.* P.124.

*And so their Acts are Null.*

P.125.156.

*The Act for continuing this Parliament, so long as both houses please, is void, because it is,*

1. *Against Common right; for thereby the Parliament Men will not pay their Debts: And they may do wrong to other Men, Impune: Besides the*

## The Table.

*the utter destruction of all Mens actions, who have to do with Parliament Men, by the Statute of Limitation, 21. Jacob.*

2. *Against common reason, for Parliaments were made to redress publick Grievances, not to make them.*

3. *Impossible, the Death of his Majesty (whom God long preserve) dissolving it necessarily.*

4. *Repugnant to the Act for a Triennial Parliament, and to the Act for holding a Parliament once a Year.*

P. 144, 145.

*The end of continuing this Parliament was to raise credit for Money; for three purposes: And the three ends of the Act being determined, it agreeth with Law and Reason, the Act should end.*

P. 147, 148.

*A perpetual Parliament (besides that it incites Men to self ends) will be a constant charge to the Kingdom, by reason of the Wages of Parliament Men.*

p. 148.

*Mischiefs by the length of Parliaments.*

ibid.

Certain

## The Table:

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Certain Erroneous Positions and Proceedings of both Houses of Parliament, Discovered and confuted.

**T**He two Houses without the King are not the Parliament, but only parts thereof: And by the abuse, and misunderstanding of this Word Parliament, they have miserably deceived the People. p.83.

The King is not virtually in the two Houses. p.9,10,18,19.

The two Houses are not above the King, but the King is Superiour to them. p.7.16.21,22.

The Tenets of the Spencers, are the grounds of their Proceedings. p.6.

And upon their Pretences, they take upon them the Government at this time.

They have destroyed above 100 Acts of Parliament (even all concerning the King, the Church, and Churchmen) and in effect Magna Charta, and Charta de Forreſta, which are the Common Laws of the Land. p.161.

They



## The Table.

*They have fifteen several illegal ways raised Money upon the Subject this present Parliament.* p. 35, 36.

*There is no Crime from Treason to Trespass, but they are guilty of.* p. 150.

*They are not to be Judges in their own cause.* p. 13.

*Of their League and Covenant with the Scots.* p. 166, 167.

*The two Houses by the Law of this Land, have no colour of Power, to make Delinquents, or pardon Delinquents, the King contradicting.* p. 122.

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**Certain Erroneous Positions and Proceedings in the House of Commons, Discovered and Confuted.**

**T***hey cannot be Members of the House of Commons, who were not resident in the Counties, or Burroughs, for which they were Elected, at the time of the Test of the Writ of Summons of Parliament.* p. 157.

*If any undue Return be made, the person returned is to continue a Member,*

## The Table.

ber, and the Tryal of the Falsity of the return, is to be before the Justice of Assize, in the proper County; this condemns the Committee for undue Elections. p. 156.

The House of Commons cannot Elect, and return Members of that House. p. 153.

The ejecting of a Member that hath sitten, is against Law, also their new Elections are against Law: And by this it may be judged, what a House of Commons we have. p. 156.

Breaches of priviledges of Parliament may be punished in other Courts.

And what need then of a Committee for Priviledges. p. 158.

The House of Commons by their Writ have separate Power given them over the Kings People. p. 153.

The House of Commons cannot imprison any who are not their Members, or Disturbers of their Members in the service of the Parliament. p. 153;

154, 155.

The House of Commons is no Court.

p. 156.

The

## The Table.

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The Propositions sent by the Parliaments of both Kingdoms to His Majesty at *New-Castle*.

**G**eneral Reasons against those Propositions. p.8.12.132.

Reasons in particular against the Propositions.

For disabling the King to pardon. p.10.

For altering Religion in point of Government. p.37.64.66.

For Sale of the Bishops Lands. p.36.

For taking away the Book of Common-Prayer. p.37.

For taking from his Majesty all the Power by Land and Sea. ibid.

For laying upon the People what Taxes they shall think meet. p.128.

Besides in their Propositions they do not stile themselves his Majesties Subjects. p.140.

The

## The Table.

### The Kings Party.

**T**He Subjects are commanded by  
Law to assist the King in War. p.36.

Those who adhere to the King are  
freed by the Statute of the 11. Hen. 7. p.93.

Mr. Pryn's Objections against the  
King and his Party answered. p.48.  
&c.

### The Parliaments Party are De- linquents.

**A** Delinquent is he who adheres to  
the Kings Enemies: this shews  
who are Delinquents. p.3.

### The Army serving the Par- liament.

**T**He Sum of the Ordinance for the  
Indemnity of the Army. p.81.  
It can no more free the Souldiers,  
than repeal all the Laws of the Land. p.82.

The

## The Table.

*The Judges are sworn to do Justice,  
according to the Laws of the Land.*

p.83.

*An Act of Oblivion, and a General  
Pardon, the only means to Indemnifie  
the Army and the whole Kingdom.*

p.90.

*And the Conclusion of all the other  
Books.*

### The Army Rescuing the King.

**T**O deliver the King out of Trayte-  
rous hands, is our bounden duty by  
the Law of God and the Land.

p 162, 163.

*By the Law of the Land, when  
Treason, or Felony is Committed, it is  
lawful for every Subject, who respects  
the Offender, to apprehend him, so that  
Justice may be done upon him, accor-  
ding to Law.*

p.165.

*As the Army hath power, so adhe-  
ring to the King, all the Laws of God,  
Nature, and Man, are for them.*

p.175.

*None by the Law of the Land can  
in this Kingdom have an Army but the  
King.*

p.180.

*The*

## The Table.

### The Liberty of the Subject.

**O**ur Liberties were allowed in the  
17. of King John, and confirm'd  
in the 9th. of Hen. 3: and are called  
Magna Charta, and Charta de For-  
resta.

p.2.114.

Magna Charta is irrepealable. p.65.

Several Bills for our Liberties passed  
at the beginning of this Parliament.

p.34.

And how secured.

The Liberty of the Subject violated  
by the two Houses of Parliament.

153, &c.

### Miscellanea.

**T**he Lord Cooks Institut. Published  
by the Order of the House of Com-  
mons.

p.81.

Of the Bill passed this Parliament  
for taking away the Bishops Votes in  
Parliament.

p.30.

Against that saying, that the King  
got away the Great Seal surreptitiously  
from the Parliament.

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Of Jack Cade.

p.172.

Trea.

## The Table.

*Treasons, Murthers, Felonies, and Capital Crimes to be tryed by Juries, and not otherwise, but by Act of Parliament.* p.97.

*The Chancellors or Keepers Oath.*

p.184.

*The present Commissioners have no Court Seal, nor Commission.* p.185.

*The King, the Laws and Kingdom cannot be severed.*

*The only quarrel was for the Militia, which the Laws have ever settled upon the King.*

p.187.

*No Peace can possibly be had without the King.*

p.188.

*No Man can devise Lands till he be 21. Years of Age.*

p.195.

*An Infant of 17. years may dispose of Goods by will by the opinion of some, but by others not till 18.*

p.196.

*The Court of Wards had no jurisdiction over the personal Estate.*

p.198.

*Peace and plenty abounded during his Majesties Government.*

p.201.

*Since the two Houses have Usurped the power, the Kingdom hath been in a sad condition.*

p.201.

*Nothing delivered in this Book for Law but what the House of Commons have*

## The Table.

*have avowed for Law this Session.*  
p. 206.

*The 14 Propositions of Law set out  
in divers Books by the house of Com-  
mons order.*  
p. 207.

*It is honourable to die for the Laws.*  
p. 202.

*Good Counsel for them if it be taken  
in time.*  
p. 203.

That which will save this Land  
from Destruction is an Act of Oblivion, and his Majesties Gracious General pardon, the Souldiers their Arrears, and every Man his own, and truth and peace established in this Land, and a favourable regard had to the satisfaction of tender Consciences.

*God save the King.*

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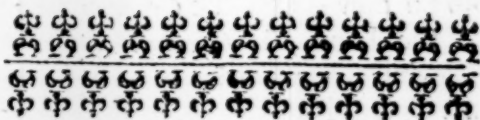


## ADVERTISEMENT.

**T** *Here is newly Printed for Joseph Hindmarsh at the Black-Bull in Cornhill, Satyrs upon the Jesuits, written in the year 1679, upon occasion of the Plot, together with the Satyr against Virtue, and some other Pieces by the same Hand.*







# LEX TERRÆ.



He Law of this Land hath three Grounds: First, *Custom*. Secondly, *Judicial Records*. Thirdly, *Acts of Parliament*. The

two later are but declarations of the *Common Law* and *Custom* of the Realm, touching *Royal Government*. And this law of *Royal Government*, is a *Law Fundamental*.

The Government of this Kingdom by a *Royal Sovereign*, hath been as ancient as History is, or the memorial of any time: what power this *Sovereignty* always had and used in War and Peace in this Land, is the scope of this Discourse: that *Usage* The Kings Prerogative is a principal part of the Common Law. *Com Littl.* 344. 27 *Hen.* 8. *Stamford prer. fol.* 1. 2 *Pars instit. fol.* 496. 3 *Pars instit. pag.* 84.

B

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so practised, makes therein a *Fundamental Law*; and the *Common Law* of the Land, is *Common Usage*; *Plowdens Commentaries* 198. For the first of our Kings since the Norman Conquest, the first *William*, second *William*, *Henry* the first, *Stephen*, *Henry* the Second, and *Richard* the first, the Customes of the Realm touching *Royal Government* were never questioned: The said Kings enjoyed them in a full measure. In King *Johns* time the Nobles and Commons of this Realm conceiving that the ancient Customs and Rights were violated, and thereupon pressing the said King to allow them, in the seventeenth of King *John*, the said Liberties were by King *John* allowed, and by his Son *Henry* the Third, after in the ninth year of his Raigh confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared four hundred twenty two years sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customes,  
( and

(and the fundamental Rights of the King as *Souveraigne* are no other) How the Rights of *Souveraignty* continued in practice from *Henry the Thirds* time untill this present Parliament of the third of *November*, 1640. For before *Henry the Thirds* time the *Souveraignty* had a very full power.

*Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea quæ sunt jurisdictionis & pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat.* This proves where the supream Power is.

Bracton  
remp, H. 3.  
l. 4. cap. 24.  
Sect. 1.

A Delinquent is he who adheres to the Kings Enemies *Com. Sur. Littl* 261. This shews who are Delinquents.

*Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo:* This shews where the supream power is.

Sect. 5.  
Bract. ibid.

*Bracton l. 5. Deum, satis habet ad pœnam*  
*tract. 3. de dolaiici cap*  
*3. Bracton l. 3. cap. 7.* *quod Deum expectat ultorem.*  
 This shews where the supream power is.

Treasons, Felonies, and other Pleas of the Crown, *are propria causa Regis*: This shews the same power.

By these passages it doth appear what the Custom was for the power of *Soveraignty* before that time, the power of the *Militia*, of coyning of Money, of making Leagues with foreign Princes, the power of pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

*Sexto Edw. 1. Com. Sur. Littl. 85.*  
*Edward. 1.* Liege-Homage, every Subject owes to the King; viz. Faith *de Membro, de vita, de terreno honore*; the form of the Oath, *inter vetera Statuta*, is yet down. We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

\* *7 Edward. 1. Statutes at large, fol. 42.* It is declared by the \* Prelates, Earls, Barons and Commonalty of the Realm, that it belongeth to the King

King and his Royal Segniory, straitly to defend force of Armor, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall do contrary according to the Law and Usage of the Realm, and hereunto they are bound to aid their Sovereign Lord, at all seasons when need shall be. Here the supreme power, in the time of Parliament, by both Houses is declare to belong to the King.

At the beginning of every Parliament, all armes are or ought to be forbidden to be borne in London, Westminster or the Suburbs. This commandmentes the multitudes comming to Westminster, and the Guards of armed men. 7 Ed. 2. 4. pars inst. 14.

All who held by Knights service and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda*. 1 Ed. 2. de Militibus. This agrees with the Records of ancient time, continued constantly in all Kings Times: but at this Parliament 3 November. 1640. the King out of his grace discharged this duty, which proves that the power of warre, and preparation

thereto, belongs not to the Houses,  
but only to the King.

Edw. 3.

Calvins

Case, Cook l.

7 fol. II.

The two *Spencers* in *Edw.* the 2.  
time hatched (to cover their treason)  
this damnable and damned opinion  
(viz. That Ligeance was more by  
reason of the Kings politick capacity  
than of his person; upon which they  
inferred these execrable and detest-  
able consequences. First, If the King  
demeaned not himself by reason in  
the right of his Crown, his Lieges  
are bound by Oath to remove him.  
Secondly, seeing the King could not  
be removed by suit of Law, it was to  
be done by force. Thirdly that his  
Lieges be bound to govern in default  
of him.

All which tenets were condemned  
by two Parliaments, the one called  
*exilium Hugonis* in *Ed.* 2. time; the o-  
ther by 1 *Edw.* 3. cap. 2. All which  
Articles against the *Spencers* are con-  
firmed by this last statute, the Arti-  
cles are extant in the book called  
*vetera Statuta*. The separation of the  
Kings Person from his power, is the  
principal Article condemned, and yet  
all these three damnable, detestable,  
and



and execrable consequences, are the grounds whereupon this present time relies, and the principles whereupon the two houses found their cause.

The villein of a Lord in the presence of the King cannot be seised; for the presence of the King is a protection for that time to him: This shews what reverence the Law gives to the person of a King. *Plowden. Com. 322. 27 ass. pl. 49.*

*Reges sacro oleo uncti sunt capaces spiritualis jurisdictionis:* But the two Houses were never held capable of that power.

*Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spirituales jurisdictionem:* This shews the Kings power in Ecclesiasticall Causes. *33. Ed. 3. ayde de roy. 103. Fitz. 10. H. 7. 16*

The Lands of the King is called in Law *Patrimonium sacrum*: The Houses should not have medled with that sacred Patrimony. *Com Sur. Litt Selt.*

The King hath no Peer in his Land, and cannot be judged: *Ergo* the two Houses are not above him. *3. Ed. 3. 19.*

The Parliament 15. *Ed. 3.* was repealed, for that it was against the Kings Lawes and Prerogative. 4 part *Instit. fol. 52.* This shews clearly the

Propositions sent to Newcastle, ought not to have been presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

*4 Part  
Cook Infit.  
fol. 14. 42.  
E. 3.* The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherision of the King and his Crown, to which they are sworn: This condemnes the said Propositions likewise.

*Parlia-  
ment Rol.  
num. 7.  
Rex & co n-  
suetudo Par-  
liamenti.* To depose the King, to imprison him untill he assent to certain demands, a warr to alter the Religion established by Law, or any other Law, or to remove Councillors, to hold a Castle or Fort against the King, are offences against that Law declared to be treason by the resolutions herein after mentioned; by that Law men are bound to aid the King when warr is levied against him in his Realm. *25 Ed. 3. 2.* King in this Statute must be intended in his natural body and person, that only can die; for to compass his death, and declare it by overt act, is declared thereby treason; to encounter in fight such as come to aid the King in his Wars is treason.

Com-

Compassing of the Queens death,  
 of the Kings Eldest Son , To coin  
 his money, To counterfeit his Great-  
 Seal, To levie Warr against him, To  
 adhere to such as shall so do, are de-  
 clared by that A&t to be high-treason,  
 This Statute cannot refer to the  
 King in his politick capacity, but to  
 his natural, which is inseparable from  
 the politick: for a body politick can  
 have neither Wife, nor Childe, nor  
 leive War, nor do any a&t but by <sup>21. Ed. 4.</sup>  
 the operation of the Natural body. <sup>14.</sup>

A Corporation or body politick hath  
 no soul or life, but is a fiction of the  
 Law; and the Statute meant not  
 fictitious Persons, but the body na-  
 tural, conjoyned with the politick,  
 which are inseparable.

The clause in that A&t, that no  
 man should sue for grace or pardon  
 for any offence condemned, or forfei-  
 ture given by that A&t, was replied  
 by a subsequent A&t in 12 R. 2 hol- <sup>R. 2. 11 anno.</sup>  
 den unreasonable, without example, <sup>cap. 13.</sup>  
 and against the Law and custome of  
 the Parliament. This condemnes the  
 Proposition for disabling the King to  
 Pardon. 4 *Pars Instit. fol. 42.* The A&t

of 11. R. 2. so much urged by the other side, was an Act to which the King consented; and so a perfect Act; yet Note the Army then about the Town: Note that that Law is against private persons, and by the 3. *cap.* thereof, the treasons there declared, are declared to be new treasons made by that Act, and not to be drawn to example: it was abrogated 21. R. 2. and revived by an usurper 1 H. 4. to please the people, and by the tenth chap. thereof enacts that nothing shall be treason but what is declared by 25 Ed. 3.

4. *Pars Instit*  
fol. 42.

16. Ed. cap.  
5. 16. R. 2  
cap. 5. H. 4.

The Regality of the Crown of England, is immediately subject to God, and to none other. Plain words, shewing where the supream power is.

The Commission of Array is in force, and no other Commission, Rot. *Parlm.* 5. H. 4. num. 24. an Act not printed: this Act was repealed by 4. and 5. P. & M. cap. 2 this repealed by the Act of 1. Jacobi, and so it is of force at this day, for the repealing Statute is repealed 4. *pars Institut.* fol. 51. & 125. published sithence this Parliament, by the desire of the house of

of Commons, their Order is printed in the last leaf of the commentaries upon *Magna Charta*.

Sir *Edward Cook* by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calm and quiet time, and I may say when there was no need to defend the authority of the Commission of Array. A book allowed by Sir *Na. Brent* called the reason of the war. fol. 65.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publick aids upon mens goods and estates, which are variable, and probably cannot be certainly known by any but the owners, it is impossible to avoid discretion in the assessments for so it ever was, and ever will be. By this appears that the Votes of the two Houses against the Commission of Array, were against the Law.

The death of the King dissolves the Parliament, if Kings should referre to the politick capacity it would continue after his death, 4. *Pars Inst.* H. 5. 2 H. 5. 4. pars instit 46.

46. which proves that the King can not be said to be there when he is absent, as now he is : there is no *inter-regnum* in the Kingdome ; the dissolution of the Parliament by his death shewes that the beginning and end thereof referres to the naturall person of the King , and therefore he may lawfully refuse the Propositions.

H. 6.

2 H. 5. Chap. 6. to the King onely it belongs to make Leagues with Foreign Princes : this shews where the supream power is, and to whom the Militia belongs.

8. H. 6. num. 57. Rott. Parl. Cookes 4 pars instit. 25. No priviledge of Parliament is grantable for treason, felony or breach of the peace ; if not to any one Member, not to two, not to ten, not to the Major part, 19. H. 6. 62. The law is the inheritance of the King and his people by which they are ruled, King and people ; And the people are by the Law bound to aid the King, and the King hath an inheritance to hold Parliaments, and in the aids granted by the Commonalty. If the Major part of a Parliament

ment commit treason, they must not be Judges of it, for no man or body can be judge in his own cause, and aswel as ten or any number may commit treason, the greater number may aswel.

The King by his Letters patents may constitute a County palatine, and grant Regall rights: this shews where the supream power is. 23 H. 6. 13.  
Flowd. 334.

17. Ed 4 Rot. Parl. numb. 39. No privilege of Parliament is grantable for treason, felony or breach of the peace, if not for one, not for two, or more, or a Major part. Edw. 4.

The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 25. Ed. 4. 13 and 14. but the persons of the men who make that body, may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no Treason can be Committed by or against such a body; that body hath no Soul, no Life, and subsists only by the fiction of the Law, and

Calvins case  
7. pars fol.  
11, 12.

and for that reason the Law doth conclude as aforesaid; the Statute of 25. E. 3. must be intended of the Kings natural person, conjoynd with the politick, which are inseparable; and the Kings natural person being at *Holmby*, his Politick is there also, and not at *Westminster*; for the Politick and Natural make one body indivisible.

19 E.4.46.  
22 Ed. 4.  
*Fitz juris-*  
*dition last*  
*placite.*

If all the people of *England* should break the League made with a Foreign Prince, without the Kings consent, the League holds, and is not broken; and therefore the representative body is inferiour to his Majesties.

The King may erect a Court of Common-Pleas in what part of the Kingdom he pleaseth, by his Letters-Patents: Can the two Houses do the like?

Ed. 5.  
4 Ed. 4 25.  
5 Ed. 4. 29.

1 *Edw. 5. fol. 2.* It cannot be said that the King doth wrong, declared by all the Judges and Sergeants at Law then there.

The reason is, nothing can be done in this Common-Wealth by the Kings Grant, or any other Act of his,

as



as to the Subjects Persons, Goods, Lands or Liberties, but must be according to established Laws, which the Judges are sworn to observe and deliver between the King and his People impartially to rich and poor, high and low; and therefore the Justices and the Ministers of Justice <sup>2 Pars in-stit. 158.</sup> are to be questioned and punished if the Laws be violated: and no reflection to be made on the King. All Counsellors and Judges for a Year and three Months, untill the Tumults began, this Parliament, were all left to the ordinary course of Justice, what hath been done since is notorious.

For great Causes and Considerations an Act of Parliament was made <sup>R. 3. 1 R. 3. c. 15.</sup> for the surety of the said Kings person: If a Parliament were so tender of King *Richard* the 3d. the Houses have greater reason to care for the preservation of his Majesty.

The Subjects are bound by their <sup>H. 7.</sup> Allegiance to serve the King, for the <sup>11. H. 7.</sup> time being, against every Rebellion, <sup>c. 1.</sup> Power and Might reared against him within this Land, that it is against all Laws,

Laws, Reason and good Conscience, if the King should happen to be vanquished, that for the said deed and true Duty and Allegiance they should suffer in any thing : It is ordained they should not ; and all Acts of process of Law hereafter to be made to the contrary are to be void : This Law is to be understood of the natural person of the King, for his politick capacity cannot be vanquished, nor War reared against it.

Relapsers are to have no benefit of this Act.

12.H.7.20. It is no Statute, if the King assent  
4.H.7.18. not to it, and he may disassent ; this  
Hen. 8. proves the Negative Voice.

7.H.7.14. The King hath full Power in all  
24.H.8.c. causes to do justice to all Men ; this  
12.25.H. is affirmed of the King, and not of  
8.c.21. the two Houses.

The Commons in Parliament acknowledge no Superior to the King under God, the Houses of Commons confess the King to be above the Representative Body of the Realm.

Of good right and equity the whole and sole Power of pardoning Treasons, Felonies, &c. Belongs to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the Peace, &c. This Law Condemns the practice of both Houses at this time. 27. H. 8. c. 14. Note.

The Kings Royal Assent to any Act of Parliament Signed with his hand, expressed in his Letters-Patents under the Great Seal, and declared to the Lords and Commons shall be as effectual, as if he Assented in his own Person; a vain Act if the King be virtually in the Houses. 33. H. 8. c. 12.

The King is the head of the Parliament, the Lords the principal Members of the Body, the Commons the Inferiour Members, and so the Body is Composed, therefore there is no more Parliament without a King, then there is a Body without a Head. Dier 38. H. 8. f. 59, 60.

There is a Corporation by the Common Law, as the King, Lords, and Commons, are a Corporation in Parliament, and therefore they are no body without the King. 1. 4. H. 8. fol. 3.

The



34 *H.3.48.* The Death of the King discharg-  
 1 *Edw.4.2.* eth all Mainprise to appear in any  
 Court, or to keep the Peace.

2 *H.4.8.* The Death of the King disconti-  
 1 *H.7.10.* nues all Pleas by the Common-Law,  
 1 *Edw.5.1.* which agreeth not with the Virtual  
 Power insisted upon now.

*Edw. 6.* Writs are discontinued by the  
 1 *Edw.6.* Death of the King; Patents of Judg-  
 c. 7. es, Commission for Justices of the  
 Peace, Sheriffs, Escheators, deter-  
 mine by his Death: Where is the  
 Virtual Power?

1 *Edw. 6.* All Authority and Jurisdiction  
 c. 2. Spiritual and Temporal, is derived  
 from the King, therefore none from  
 the Houses.

2,3. *Ed. 6.* His Majesties Subjects, according  
 c. 2. to their bounden Duties, ought to  
 11 *H.7.c.1.* serve the King in his Wars, on this  
*Calvin's* side or beyond the Seas: Beyond the  
*Cafe.* Seas, is to be understood for Wages.  
*Sa pars* This proves the Power of Wars, and  
*Cook.* preparation for War, to be in the  
 1 *Part in-* King.  
*str.* 69.

5, 6 *Ed.* It is most necessary both for com-  
 c. 11. mon Policy, and duty of the Subject,  
 to restrain all manner of shameful  
 slanders against their King, which  
 when

when they be heard, cannot but be odible to his true and loving Subjects, upon whom dependeth the whole Unity and Universal Weal of the Realm. This condemns their continuing of the Weekly Pamphlets, which have been so foul mouthed against his Majesty.

The Punishment of all Offenders against the Laws, belongs to the King: And all Jurisdictions do, and of right ought to belong to the King. This leaves all to his Majesty.

*Q. Mary.*  
*1 Mar. Pl.*  
*2. cap. 2.*

All Commissions to levy Men for 4,5 P.M. the War, are awarded by the King: 6.3. The Power of War only belongs to the King.

It belongs to the King to defend his People, and to provide Arms and Force. No Speech of the two Houses.

*Q. Eliz.*  
*10 Eliz. Pl.*  
*315.*

*Roy ad sole gouvernement de ses Subjects. Corps naturel le Roy & politique font un corps.* That is, the King hath the sole Government of his Subjects. The Body Politick and the natural Body of the King, make one Body, and not divers, and are inseparable and indivisible.

*Plow. 234.*  
*242. 213.*  
*Calvins*  
*Case.*  
*7 pars fol.*  
*12.*  
*Plow. com.*  
*213.*

The

*Flow.* 934.  
243. 213.  
*Calvins*  
*Case.*  
7 *pars fol.*  
12.

The Body Natural and Politick make one Body, and are not to be severed: Ligeance is due to the natural Body, and is due by Nature, Gods Law, and Mans Law, cannot be forfeited nor renounced by any means, it is inseparable from the person.

Every Member of the House of  
1 *Eliz. c. 1.* *Commons*, at every *Parliament* takes a  
*Cawdries* Corporal Oath: That the King is  
*Case. 5 pars* the Supream and only Governour in  
*fol. 1.* all Causes in all his Dominions, otherwise he is no Member of that House; the words of the Law are, in all causes over all Persons.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Cawdries Case* *ibid.*

43. *Eliz. 3.*  
*pars. instr.*  
*fol. 6. 2.*

The Earl of *Essex*, and others, Assembled Multitudes of Men to remove Councillors, adjudged Treason by all the Judges of *England*.

39. *Eliz.*  
*Hil 1 Fa-*  
*cobi. ibid.*

To Depose the King, or take him by Force, to Imprison him until he hath yielded to certain Demands, Adjudged Treason, and Adjudged accordingly in the Lord *Cobham's Case*.

Arising

Arising to alter Religion Esta- 39 *Ed. Brad.*  
 blished, or any Law is Treason; so *case. fol. 9. &*  
 for taking of the Kings Castles, 16. By all  
 Forts, Ports, or Shipping, *Brook of England,*  
 Treason 24. 3. and 4. *Philip and ib. 10. Eliz.*  
*Mary, Dier. Stafford's Case concern. Plow. 316.*  
 ing *Scarborough.*

The Law makes not the Servant  
 greater then the Master, nor the Sub-  
 ject greater then the King, for that  
 were to subvert order and measure.

The Law is not known but by U. 10. *Eliz.*  
 sage, and Usage proves the Law, and *Plow. 319.*  
 how Usage hath been is notoriously  
 known.

The King is our only rightful *K. James.*  
 and lawful Liege, Lord and Sove- *1 Jac. c. 1.*  
 reign, we do upon the Knees of our *9. Edw. 4.*  
 Hearts agnize constant Faith, Loyal- *fol. 1.*  
 ty and Obedience to the King and  
 his Royal Progeny in this high Court  
 of Parliament, where all the Body of  
 the Realm is either in person, or by  
 representation: We do acknowledge  
 that the true and sincere Religion of  
 the Church is continued and Establi-  
 shed by the King, and do recognize,  
 as we are bound by the Law of God  
 and Man, the Realm of *England* and  
 the

the *Imperial Crown* thereof doth belong to him by Inherent Birth-right, and lawful and Undoubted Succession, and submit our selves and our Posterities for ever, until the last drop of our Blood be spent, to his rule, and beseech the King to accept the same as the first fruits of our Loyalty and Faith to his Majesty and his posterity for ever; and for that this act is not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their Titles to the Crown by the two Houses, but by inherent Birth-right; and that there can be no Statute without his express Assent; and destroys the *chimera* of the Kings Virtual being in the Houses.

3 *Jac. c. 4.* To promise Obedience to the  
 23 *Eliz. c. 1.* Pope, or any other State, Prince or Potentate, other than the King, his Heirs and Successors, is Treason; and therefore those persons who call the Houses the Estates, offend this Law.

Such



Such Bills as his Majesty is bound in Conscience and Justice to pass, are no Law without his Assent.

K. Charles.  
Collection  
of Ordinances, fol.

To design the ruine of the Kings Person, or of Monarchy, is a monstrous and injurious charge.

727.  
1 pars ib. fol.  
728.

*Ubi Lex non distinguit, non est distinguendum*: All the aforesaid Acts and Laws do evidently prove the *Militia* to belong to the King: That the King is not virtually in the two Houses: That the King is not considerable separately in relation to his Politick capacity: That the King is not a person trusted with a Power, but that it is his Inherent Birth-right from God, Nature, and Law, and that he hath not his power from the People: These Laws have none of those distinctions of natural and politick, *abstractum & concretum*, Power and Person: In *Cesar's* time this Island had Kings, and ever since, which is almost 1700 Years agoe.

Ib. fol. 865.

No King can be named, in any time made in this Kingdom by the People; A Parliament never made King, for they were Kings before:  
the

the Parliaments are Summoned by the Kings Writs, which for Knights, Citizens and Burgesſes begins thus, viz.

*Rex Vic. Wilts. salutem. Quia Nos de aviſamento & aſſenſu Conſilii noſtri pro quibuſque arduis & urgentibus negotiis Nos ſtatum & deſenſionem Regni n'ri Ang. & Eccleſ. Anglic. concernentibus, quoddam Parliamentum noſtrum apud B. teneri ordinavi-  
mus, & ibid. cum Prælatiſ, Magnatib. & Proceribus dicti Regni noſtri Colloquium habere & tractatum, tibi præcipimus firmiter injungendo qd. facta Proclamatione in prox. Comitatu tuo poſt receptionem ejus. Brevis, duos Milites gladiis cinctos, &c. eligi facias, ad faciendum & conſentiendum hiis quæ tunc ibidem de Communi Concilio n'ro Angl. favente Deo, contigerit ordinari ſuper Negotiis antedictis, ita quod  
pro*

*pro defectu potestatis hujusmodi, seu propter improvidam electionem Militum, Civium, & Burgensium prædicta negotia n'ra, infecta non remanerent.*

The King is *principium, caput, & 4 pars Insti. finis Parliamenti*, the Body makes *fol. 3. & 4.* not the Head, nor that which is posterior, that which is prior, *consilium non est Præceptum, Consilarii non sunt Præceptores*, for Counsel to compel a consent, hath not been heard of to this time in any Age; and the House of Commons, by the Writ, are not called *ad consilium*; the Writs to the twelve Judges, Kings Council, twelve Masters of the Chancery are *consilium impensuri*, and so of the Peers. The Writs for the Commonalty, *Ad faciendum & consentiendum*: Which shews what Power the Representative Body hath; they have not Power to give an Oath, neither do they claim it.

The King at all times when there is no Parliament, and in Parliament, is assisted with the advice of the Judges of the Law, twelve in number, The Oath of the Justices 18 of E.3. among Statutes of

C

for that year.

for *England* at least hath two Sergeants when fewest; an Attorney and Solicitor, twelve Masters of the Chancery; his Council of State consisting of some great Prelates, and other great Personages, versed in State Affairs, when they are fewest to the number of twelve. All these persons are always of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in Divine Law, the other Grandees in Affairs of State, and managery of Government; The Judges, Kings Serjeants, Attorney, Solicitor, and Masters of the Chancery versed in the Law and Customs of the Realm; All sworn to serve the King and his People justly and truly: The King is also sworn to observe the Laws, and the Judges have in their Oath a Clause, that they shall do common right to the Kings People, according to the Established Laws, notwithstanding any Command of the King to the contrary, under the great Seal, or otherwise; the People are safe by the Laws in force, without any new: The Law finding

finding the Kings of this Realm assisted with so many great Men of Conscience, Honour, and Skill in the rule of Common-Wealth, Knowledge of the Laws, and bound by the high and Holy Bond of an Oath upon the *Evangelists*, settles among other Powers upon the King, a Power to refuse any Bill agreed upon by both Houses, and Power to pardon all Offences, to pass any Grants in his Minority, (there are many great persons living hold many a thousand Pound a Year by Patents from *Edw.* the Sixth, passed when he was but ten Years of Age) not to be bound to any Law to his Prejudice, whereby he doth not bind himself; Power of War and Peace, Coyning of Money, making all Officers, &c. The Law, for the reasons aforesaid, hath approved these Powers to be unquestionable in the King, and all Kings have enjoyed them till 3. *Nov.* 1640.

It will be said, notwithstanding all this fence about the Laws, the Laws have been violated, and therefore the said Powers must not hold:

The two Houses will Remedy this.

The Answer to this is evident: There is no time past, nor time present, nor will there be time to come, so long as Men mannage the Law; but the Laws will be broken more or less, as appears by the story of every Age. All the pretended Violations of this time were remedied by Acts to which the King consented before his departure, 10. Jan. 1641. being then driven away by Tumults: And the Houses for a Year and almost three Months, (from 3 Nov. 1640. to 10 Jan. 1641, as aforesaid, being a Year and almost three Months,) had time and liberty to question all those persons who were either causes or Instruments of the Violation of any of the Laws.

Examine how both Houses remedied them in former times. First, touching Religion; What hath been done this way? Both Houses in Henry the Eighth's time tendered to him a Bill to be passed, called commonly the Bill of the Six Articles: This  
was

was conceived by them to be a just and a necessary Bill : Had not *Henry* the Eighth done well to have refused the passing of this Bill ? Both Houses tendered a Bill to him to take the reading of the Scriptures from most of the Laity : Had not King *Henry* the Eighth deserved much praise to reject this Bill ? In Queen *Mary's* time both Houses exhibited a Bill to her to introduce the *Popes* Power and the *Roman* Religion ; had not Queen *Mary* done well to have refused this Bill ? Many such Instances may be given. The two Houses now at *Westminster* I am sure will not deny but the refusal of such Bills had been just, the King being assisted as aforesaid : And why not so in these times ?

For the Civil Government, what a Bill did both Houses present to *Richard* the third, to make good his Title to the Crown ? Had it not been great Honour to him to have rejected it ? What Bills were exhibited to *Henry* the Eighth by both Houses for Bastardizing of his Daughter *Elizabeth*, a Queen of Renowned

memory, to settle the Crown of this Realm for default of Issue of his body, upon such persons as he should declare by his Letters Patents, or his last will, and many more of the like? had not this refusall of passing such Bills magnified his vertue, and rendered him to posterity in a different Character from what he now hath?

And by the experience of all times and the consideration of humane frailty, this conclusion is manifestly deduced, that it is not possible to keep men at all times (be they the Houses, or the King and his Councell) but there will be sometimes some deviation from the Lawes; and therefore the constant and certain powers fixed by the ancient Law must not be made void; and the Kings Ministers the Lawes do punish where the Law is transgressed, and they only ought to suffer for the same.

In this Parliament the Houses exhibited a Bill to take away the suffrages of Bishops in the upper House of Parliament, and have since agreed there shall be no more Bishops at all; might not the King if he had so pleased



fed have answered this Bill wi th *Le Roy avifera* or *ne veut*? it was a-  
gainft *Magna Charta*, *Articuli Cleri*,  
and many other Acts of Parliament.  
And might have further given thefe  
reaſons, if it had ſo pleaſed him for  
the ſame: Firſt, that this Bill deſtroys  
the Writ. whereby they are made  
two Houſes of Parliament, 14. *Hen.*  
7. fol. 22. *Evêſq; eſt ſignior de grand*  
*honneur*. The King in the Writ being  
*cum Prælatiſ colloquium habere*:  
Secondly, they have been in all Par-  
liaments ſince we had any, and voted,  
but in ſuch wherein they themſelves  
were concerned: And there have  
been Biſhops here ſithence we were  
Chriſtians, and the Fundamental  
Law of the Kingdom approves of  
them: If any of them were concei-  
ved offensive, they were left to  
juſtice, and his Maſteſty would put in  
inoffenſive men in their places; but  
ſithence his Maſteſty hath paſſed the  
Bill for taking away their Votes in  
Parliament, it is a *Law* that binds us  
ſo far.

Upon the whole matter, the Law hath notably determined that Bills agreed by both Houses, pretended to be for the Publick good, are to be judged by the King; for in all Kings Reigns Bills have been preferred by both Houses, which alwayes are pretended to be for the publick good, and many times are not, and were rejected with *Roy. avisera*, or *Roy ne veult*.

This Parliament began the 3. of *Novemb.* 1640: before that time in all the Kings reign no armed power did force any of the people to do any thing against the Law; what was done was by his Judges, Officers, Referrees and Ministers; from that time untill the 10 of *Jan.* 1641. when the King went from *London*, to avoid the danger of frequent tumults, being a year and three months, Privie Counsellors, and all his Justices and Ministers were left to the justice of the Law; there wanted not time to punish punishable men.

The Sphere of the House of Commons is to represent the grievances of the Country, to grant aids for the  
King

King upon all fit occasions extraordinary, to assent to the making or abrogating of Laws: the Orb of the House of Lords to reform erroneous judgments given in the Kings Bench, to redress the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their counsell<sup>r</sup>, to have their Votes in making or abrogating of Laws, and to propose for the common good, what they conceive meet.

*Lex non cogit ad impossibilia*, Subjects are not to expect from Kings impossible things; so many Judges, Counsellors, Sheriffs, Justices of the Peace, Commissioners, Ministers of State; that the King should overlook them all, cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice, so long as they continue his Courts: their charge is to administer the Laws in being, and not to delay, defer, or sell justice for any Commandment of the King. We have Lawes enough; *Instrumenta boni seculi sunt boni viri*, good Ministers, as Judges,

and Officers, are many times wanting; the Houses propose new Laws, or abrogation of the old, both induce novelty; the Law for the reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number of grave, learn'd and prudent men as aforesaid.

For the considerations aforesaid the Kings Party adhered to him, the *Law* of the Land is their *Birth-right*, their *Guide*; no offence is committed where that is not violated: they found the Commission of *Array* warranted by the Law; they found the King in this Parliament to have quitted the *Ship-money*, *Knighthood-money*, *seven Courts of Justice*, consented to a *Triennial Parliament*, settled the *Forrest bounds*, took away the *Clerk of the Market*, of the Household, trusted the House with the *Navy*, passed an *Act not to dissolve this Parliament* without the Houses assent; no people in the world so free, if they could have been content with *Laws*, *Oaths*, and *Reason*: and nothing more could or can be devised to secure us, neither hath been in any time.

Not.

Notwithstanding all this, we found the King driven from *London* by frequent tumults, that two thirds and more of the Lords had deserted that House for the same cause, and the greater part of the House of Commons left that House also for the same reason, new men chosen in their places against *Law* by the pretended Warrant of a *counterfeit Seal*, and in the Kings name against his consent, levying Warr against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Oaths to oppose Forces raised by the King, nor to adhere to him, but to them in this Warr, which they call the *Negative Oath*; and the *Vow and Covenant*.

By severall wayes never used in this Kingdom they have raised monies to foment this Warr, and especially to enrich some among them: namely, first, *Excise*; secondly, *Contributions*; thirdly, *Sequestrations*; fourthly

fourthly, *Fift parts* ; fifthly, *Twentieth parts* ; sixthly, *Meal-money* ; seventhly, *Sale of plundred goods* ; eighthly, *Loanes* ; ninthly, *Benevolences* ; tenthly, *Collections upon their Fast dayes* ; eleventhly, *New Impositions upon Merchandizes* ; twelfthly, *Guards maintained upon the charge of private men* ; thirteenthly, *Fifty Subsidies at one time* ; fourteenthly *Compositions* with such as they call *Delinquents* ; fifteenthly, *Sale of Bishops Lands, &c.*

From the Kings Party meanes of  
 1. *R. 3. cap.* subsistence are taken ; before any in-  
 3. *Braft. l. 3.* dictment, their lands seized , their  
 r. *8. Stan-* goods taken : the Law allows a Trai-  
 ford 192. tor or Felon attainted *necessaria sibi*  
*Sir Ger.* *Fleetwoods & familia sua in victu & vestitu* :  
 Case 8. where is the Covenant ? where is the  
*pars. Cook.* Petition of Right ? Where is the  
 7. *H. 4. last* Liberty of the Subject ?  
*leaf.*

First we have aided the King in this Warr contrary to the Negative Oath, and other Votes : Our warrant is the twenty fifth of *Edward* the third, the second Chapter, and the said resolutions of all the Judges.

Secondly ,

Secondly, we have maintained the Commission of *Array* by the Kings <sup>4. pars Inst.</sup> command, contrary to their Votes: <sup>225. 2 Inst.</sup> We are warranted by the Statute of <sup>696.</sup> the fifth of *Henry the fourth*, and the judgment of Sir *Edward Cook*, the Oracle of the Law, as they call him. <sup>law so at the Edition of that Book. Hut-  
son and</sup>

Thirdly, we maintained *Arch Bishops* and *Bishops*, whom they would suppress. Our warrant is *Magna Charta*, and many Statutes more. <sup>Crook.</sup>

Fourthly, Wee have maintained the Book of *Common Prayer*; they suppress it: Our warrant is five Acts of Parliament in *Edward the sixth* and *Queen Elizabeths* time, 5 *Pasche* 35 *Elizabeth. inter placita Corona in Banco Regis*, New Book of Entries, fol. 252. *Penry*, for publishing two scandalous Libels against the Church-Government, was indicted, arraigned, attainted, and executed at Tyburn.

Fifthly, We maintained the *Militia* of the Kingdom to belong to the King; they the contrary; our warrant is the Statute of the seventh of *Ed-*

*Edward* the first, and many Statutes  
sithence, the pra<sup>ct</sup>ice of all times, and  
the Custom of the Realm.

Sixthly, We maintained the coun-  
terfeiting of the great Seal to be high  
Treason, and so of the usurpation of  
the Kings Forts, Ports, Shipping, Ca-  
stles, and his Revenue, and the Coyning  
of Money, against them: We have  
our warrant by the said Statute of  
the twenty fifth of *Edw.* the Third,  
Chapter the second, and divers o-  
thers since, and the pra<sup>ct</sup>ice of all  
times.

Seventhly, Wee maintain, that  
the King is the only supream Gover-  
nour in all causes: They, that his Ma-  
jesty is to be governed by them: Our  
warrant is the Statutes of the first of  
Queen *Elizabeth*, Chapter the first,  
and the fifth of Queen *Elizabeth*, the  
first.

9 Ed. 4.  
fol. 4.

Eightly, we maintain that the  
King is King by an inherent birth right,  
by nature, by Gods Law, and by the Law  
of the Land. They say his Kingly  
right is an Office upon trust: Our  
warrant is the Statute of the first of  
King *James*, Chapter the first; and  
the



the resolution of all the Judges of *England* in *Calvin's Case*.

Ninthly, Wee maintain that the *politick capacity is not to be severed from the naturall*. They hold the contrary: Our warrant is two Statutes (*viz.*) *Exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third, Chapter the second, and their Oracle, who hath published it to Posterity, that it is *damnable, detestable, and execrable Treason; Calvins Case, pars 7 fol. 11.*

Tenthly, Wee maintain, that *who aids the King at home or abroad, ought not to be molested or questioned for the same*. They hold and practice the contrary; Our warrant is the Statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly, Wee maintain, that *the King hath power to dissasent to any Bill agreed by the two Houses*; which they deny: Our warrant is the Statute of the second of *Henry* the fifth, and the practice of all times; the first of *King Charles* Chapter the seventh, the first of *King James* Chapter the first.

Twelf-

Twelfthly, We maintain, that *Parliaments ought to be holden in a grave and peaceable manner, without tumults*: They allowed multitudes of the meanest sort of the people to come *Collect. of to Westminster to cry for justice when* Ord. fol. 31 *they could not have their will, and keep guards of armed men to wait upon them*: Our warrant is the Statute of the seventh of *Edward the second*, and their Oracle.

Thirteenthly, We maintain, that *there is no State within this Kingdom but the Kings Majesty, and that to adhere to any other State within this Kingdom is high Treason*: Our warrant is the Statute of the third of King *James*, Chapter the fourth, and the twenty third of Queen *Elizabeth*, Chapter the first.

Fourteenthly, We maintain, that *to levie a Warr, to remove Counsellors, to alter Religion, or any Law established, is high Treason*; They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in Queen *Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly , we maintain, that  
*No man should be imprisoned, put out  
 of his lands, but by due course of Law;*  
*and that no man ought to be adjudged to  
 death, but by the Law established, the  
 Customes of the Realm, or by Act of  
 Parliament ;* They practice the con-  
 trary in *London, Bristol, Kent, &c,*  
 Our warrant is *Magna Charta*, Chap-  
 ter the twenty ninth, the *Petition  
 of Right*, the third of *King Charles*,  
 and divers Lawes there mention-  
 ed.

We of the *Kings Party* did and do  
 detest *Monopolies, and Ship-mony*, and  
 all the *grievances of the people as much  
 as any men living ;* we do well know,  
 that our estates, lives and fortunes  
 are preserved by the Laws, and that  
 the King is bound by his Laws; wee  
 love Parliaments: if the *Kings Judges,*  
*Councell, or Ministers* have done  
 amiss, they had from the third of  
*November 1640, to the tenth of  
 January 1641,* time to punish them,  
 being all left to justice, *where is the  
 Kings fault ?*

The

II Pars  
Cooks Re-  
ports.  
Magdalen  
Colledge  
Case.

The Law saith, *The King can do no wrong*, that he is *Medicus Regni, Pater Patriæ, Sponsus Regni*, qui per *annulum* is espoused to his Realm at his Coronation; the King is Gods Lieutenant, and is not able to do an unjust thing: These are the words of the Law.

One great matter is pretended, that the People are not sure to enjoy the Acts passed this Parliament, a succeeding Parliament may repeal them: The Objection is very weak; a Parliament succeeding to that may repeal that repealing Parliament: That fear is endless and remediless, for it is the essence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have Power over Parliaments before: Parliaments are as the times are; If a turbulent Faction prevails, the Parliaments are wicked, as appears by the Examples recited before of extream wicked Parliaments; if the times be Sober and Modest, Prudent and not Biassed, the Parliaments are right, good, and honourable, and they are good Medicines and  
Salves;

Salves ; but in this Parliament *exces-*  
*sit medicina modum.*

In this cause and War between the Kings Majesty and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them *but the Laws*? What means could they use to discern what to follow, what to avoid, but the Laws? The King declares it *Treason* to adhere to the Houses in this War: The Houses declare it *Treason* to adhere to the King in this War : The Subjects for a great and considerable part of them ( *Treason* being such a Crime as forfeits Life and Estate, also renders a Mans Posterity base, beggarly, and infamous ) look upon the Laws, and find *the letter of the Law* requires them to assist the King, as before is manifested ; was ever Subject criminally punisht in any Age or Nation for his pursuit of what the Letter of the Law commands?

The Subjects of the Kingdom find the distinction and Interpretation now put upon the Laws of *Abstractum* and *Concretum*, Power and Person, body Politick and Natural, Personal pre-

presence and Virtual, to have been  
 Condemned by the Law; and so the  
 Kings Party had both the Letter of  
 the Law, and the Interpretation of  
 the Letter cleared to their Judg-  
 ments, whereby they might evident-  
 ly perceive what side to adhere to :  
 What satisfaction could modest,  
 peaceable, and Loyal Men more  
 desire ?

*A verbo legis in criminibus & pœnis  
 non est recedendum*, hath been an ap-  
 proved Maxim of Law in all Ages  
 and Times : If the King be King and  
 remain in his Kingly Office (as they  
 call it) then all the said Laws are a-  
 gainst them without colour : They  
 say the said Laws relate to him in his  
 Office, they cannot say otherwise ;  
 they make Commissions and Pardons  
 in the Kings Name, and the person  
 of the King and his Body Politick  
 cannot, nor ought to be severed, as  
 hath been before declared : And  
 the Members of both Houses have  
 sworn constantly in this Parliament,  
 that the King is the only Supream Go-  
 vernour in all causes over all Persons at  
 this present time. ?

Coll. of  
 Ord. 777.

5 El. cap. I.

1 El. cap. I.

For

For what of Verbal or Personal Commands of the King which is objected; we affirm few things to be subject thereto by the Law: But his Majesties Command under his Great Seal, which in this War hath been used by the Kings Command for his Commission to levy and array Men, that is no personal command (which the Law in some Cases disallows) but that is such a command, so made, as all Men hold their Lands by, who hold by Patents; all Corporations have their Charters which hold by Charters, and all Judges and Officers their places and callings.

It is objected, The King cannot suppress his Courts of Justice, and that this War tended to their suppression.

*Ob.*

The answer is, The King cannot nor ought to suppress Justice, or his Courts of Justice, nor ever did; but Courts of Justice by *abuser or non user* cease to be Courts of Justice; when Judges are made, and proceedings in those Courts holden by others than Judges made by the King,

*Sol.*

*7 pars. The Earl of Westmorlands case. 1 Eliz. Dier. 165. 7 pars Cooke.*

The case of  
disconti-  
nuance of  
Process.

King, and against his Command under the Great Seal, and his Majesty is not obeyed, but the Votes of the Houses; and his Judges breaking that condition in Law, of trust and loyalty, implied in their Patents, are no longer his Judges; they obey, and exercise their places by Vertue of Writs and Processes under a counterfeit Seal: The King only can make Judges, the twenty seventh of *Henry* the Eighth, Chapter the twenty fourth, *Justices of the Peace*, &c. The Kings Patent makes Judges: The Chief Justice of the Kings Bench is made by the Kings Writ only of all the Judges.

28.H. 8.  
Dier 11.

*Articuli su-  
per chartas  
cap. 5.  
2 pars infi.  
552.*

The *Great Seal* is the Key of the Kingdom, and meet it is, that the King should have the Key of his Kingdom about him: Which confutes their saying, that the King got the Seal away surreptitiously.

*Britton fol.  
23.*

The King, and he only may remove his Courts from *Westminster* into some other place: At *York* the Terms were kept for seven Years in *Edward* the first's time; but for the Court of Common-Pleas, the place must



must be certain: For the Kings-Bench and Chancery, the King by the Law may command them to attend his Person always, if it seem so meet unto him; but the removing of the Common-Pleas must be to a place certain, and so notified to the People.

All the Books of Law in all times agree, that the King may grant conu-  
fance of all Pleas at his pleasure within any County or Precinct to be holden there only, and remove the Courts from *Westminster*, to some other place (for the Common-Pleas, 6 H. 7. 9. the place must be certain, and so 6 El. Dist. notified to the People,) and adjourn the Terms as he sees cause: All which the two Houses have violated.

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*Some*

*Some seeming Objections of Master Pryn's, scattered in divers Books, answered, and the Truth thereby more fully cleared.*

1 Ob.

**T**HE first of *Henry* the fourth revived the Statute of the eleventh of *Richard* the second, and repeals the one and twentieth of *Richard* the second, whereby certain persons were declared Traitors to the King and Kingdom, being of the Kings Party, by 11. *Rich.* 2.

Sol.

True, but note, the eleventh of *Richard* the second, a Parliament beset with 40000 Men, and the King assents to it, so an Act; and besides, the first of *Henry* the fourth declares, that the Treasons mentioned in the Act of the eleventh of *Richard* the second, being but against a few private Men, shall not be drawn into example, and that no Treason should be, but such as the twenty fifth of *Edward*

*Edward* the third declares : All these <sup>9 Ed. 4. fol. 80.</sup> are Acts passed by the King, and the three Estates, nor to be drawn into example in a Tumultuous time, by a besieged Parliament, with an Army ; and *Henry* the fourth being an Usurper, makes that Act of the first of *Henry* the fourth to secure himself : Also what is this to the Votes of the two Houses only at this time ?

The Court of Parliament is above <sup>2. Ob.</sup> the King, for it may avoid his Charters, Commissions, &c. granted against the Law.

And the Law is above the King.

By the same reason you may say <sup>Sol.</sup> that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the King, for they make of no effect the Kings Charters, which are passed against the Law ; and the King is subject to Law, and sworn to maintain it. Again, it is no Parliament without the King, and the King is the head thereof ; he is *principium, caput, & finis* of a Parliament, as *Modus tenendi Parliamenti* hath it ; and two Houses only, want *principium, caput & finis* of a Parliament ;

D

ment; and it is a sorry Parliament that wants all these: And therefore to say that Parliaments are above the King, is to say the King is above himself.

3. *Ob.* The Parliament can enlarge the Kings Prerogative; therefore it is above him.

*Sol.* If the King assent, otherwise not; and then it is an Act of Parliament, and otherwise no Act.

4. *Ob.* *Bracton* saith, God, the Law and the King's Court, (*viz.*) his Earls and Barons are above the King, *viz.* in Parliament as *Mr. Primm* expounds it.

*Sol.* Where is then the House of Commons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirm that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferior member is above the head, is hard to conceive; besides, that position destroyes all *Mr. Primm's* discourse, who attributes so much to the House of Commons.

The King is but one of the three *s. ob.*  
 Estates of Parliament, and two  
 are greater then one; therefore  
 above.

The Legs, Armes, and Trunk of *sol.*  
 the body are greater than the Head,  
 and yet not above, nor with Life  
 without it; the argument holds for  
 quantity, but not for quality, and in  
 truth, the King is none of the three  
 Estates but above them all; the three  
 Estates are, the Lords Spiritual, the  
 Lords Temporall, and the Commons;  
*Coke*, their Oracle, in his Chap of  
 Parl. f. 1.

In Corporations, the greater num-  
 ber of voyces make all the Acts of *6. ob.*  
 the Corporation valid; therefore so in  
 Parliament.

By this reason the Kings assent is *sol.*  
 needless, and to no end, and all the  
 Acts of Parliament formerly menti-  
 oned, and Law-bookes have' quite  
 mistaken the matter, which with u-  
 nanimous voice requires the Kings as-  
 sent as necessary: besides, the Cor-  
 porations are so constituted by the  
 Kings Charters, and the greater num-  
 ber of Votes shall make their Acts  
 valid

7. *Ob.*

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

*Sol.*

In his other Courts of Justice he hath no voice, he is none of the Judges, in the Parliament he hath; if his presence be not necessary, his voice is not nor his assent.

8. *Ob.*

Sovereign  
power of  
Parlia-  
ments, 49.

74.

The original prime legislative power of Making Lawes, to bind the Subjects and their posterity, rests not in the King, but in the Kingdom and Parliament, which represents it.

*Sol.*

Master *Prinne* in the same lease affirms, and truly, that the Kings assent is generally requisite to pass Lawes and ratifie them; the King is the Head of the Kingdom and Parliament, how then can a Body act without a Head?

9. *Ob.*

A major part of a Corporation binds, therefore the major part in Parliament, and so of By-Laws.

*Sol.*

The Corporation is so bound either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription,

tion, and Law, and practise always left the King a negative voice.

The King cannot alter the Bill <sup>10.Ob.</sup> presented to him by both Houses,

*Ergo.*

True, but the King may refuse <sup>Sol.</sup> them.

Acts of Parliament and Lawes <sup>11.Ob.</sup> ministred in the Reignes of Usurpers bind right full Kings, *Ergo.*

What is this to prove the two hou- <sup>Sol.</sup> ses power only, which is the question?  
A King *de facto* must be obeyed by them who submit to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytors and <sup>9.E.4.11.</sup> Rebels to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper; But here is a King still in both cases, and the proceedings at Law holds, the Judges having their Patents from the being Kings, in the Reignes of Kings, *de facto* or *de jure*, for all Kings are bound, and sworn to observe the Laws.

82. *Ob.* A King dies without Heir, is an Infant, *non compos mentis*, &c. the two Houses may establish Lawes, *Ergo*.

*Sol.* There is no *Inter Regnum* in England, as appears by all our Bookes of Law; and therefore the dying without Heir is a vain supposition, and by their principle he is considerable in his politick capacity, which cannot dye at all: The Protector assisted by the Councill of the King at Law, his twelve Judges, the Councill of State, his Attorney, Solicitor and two Sergeants at law, his twelve Masters of the Chancery, hath in the Kings behalf, and ever had a Negative Voice; but what is this to the present question? We have a King of full age, of great wisdom and judgment? the power of the two Houses in such a case to be over the King, cannot be shown.

83. *Ob.* The King cannot dissent to publique and necessary Bills for the common good, *Ergo*.

*Ob. Sol.* Nor ever did a good King, but who shall be judge, whether they be publique and necessary? The *Major* part in either of the Houses, for passing



passing of Bills so pretended, may be but one or two voices, or very few, and perhaps of no judicious men : is it not then fitter or more agreeable to reason that his Majesty and Council of State, his twelve Judges, his Sergeants, Attorney, and Solicitor, twelve Masters of the Chancery, should judge of the Conveniency and benefit of such Bills for the publick good, rather than a *minor* ( of which sort they may be in the Houses ) or a weak man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all ? Let reason determine.

The Kings of *England*, have been 14. ob.  
elective ; and the King by his Coronation Oath is bound to maintain *justas leges & consuetudines quas vulgus elegerit*, Ergo.

*Poper*y hath been in the King- Sol.  
dom, and therefore to continue it still, will not be taken for a good argument ; when things are settled for many ages, to look back to times of confusion is to destroy all repose :  
The Act of Parliament of the 1 of K.

*James*, Chapter the first, and all our extant Laws say, that the Kings Office is an heritage inherent in the blood of our Kings, and their birth-right.

1. E 4. c. 1. And Usurpers that come in by the consent of the people, are Kings *de facto* but not *de jure*, as appears by the Acts of Parliament declaring them so; and by all our Law books and the fundamental constitution of the Land, Regall power is hereditary and not elective.

1. Hen. 7. For the words [*vulgus elegerit*] if *vulgus* be applied to the House of Commons, they of themselves can make no Laws: The Peers were never yet termed *vulgus*; but allowing they be so called, the Laws to be made be just, and who is fit to judge thereof, is before made evident.

15. Ob. Customes cannot referre to future time, and both are coupled, Laws and Customes.

Princes have been deposed, and may be by the two Houses, *Ergo*.

Sol. The Deposers were *Traytors*, as appears by the resolution of all the Judges of *England*; *Coke*, Chap. *Trea-*

*Treason*, in the second part of the *Institutes*: And never was King deposed but in tumultuous and mad times, and by the power of Armies, and they who were to be the succeeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeal to the Parliament for errors in judgments in all Courts is frequent, *Ergo*. 16. Ob.

This is only to the House of Lords, and that is not the Parliament; the House of Commons have nothing to do therewith; and in the House of Peers, if a Writ of Error be brought to reverse any judgment, there is first a petition to the King for the allowance thereof; and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councill, and twelve Masters of the Chancery assist there, by whose advice erroneous judgments are redressed. Sol.

The Parliaments have determined of the rights of Kings, as in *Henry* the sixth time, and others, and Parliaments have bound the succession of 17. Ob.

Kings, as appears by the Statute of the thirteenth of Queen *Elizabeth*, Chapter the first. And the descent of the Crown is guided rather by a Parliamentary Title than by Common Law, *Ergo*.

So

If this objection be true, that the Title to the Crown is by Parliament, then we had no Usurpers, for they all had Parliaments to back them; yea, *Richard* the third, that Monster. All our Bookes of Law say they have the Crown by descent, and the Statutes of the Land declare, that they have the same by inherent birth-right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter, was made to secure Queen *Elizabeth* against the Queen of *Scots*, then in the Kingdom, claiming the Crown of *England*, and having many adherents: And that Statute to that end affirms no such power in the two Houses (which is the question.) but in Queen *Elizabeth*, and the two Houses, which makes against the pretence of this time.

Master Pryne, fol. 104. of his book, intituled, the *Parliaments supream power, &c.* Objecting the Statute of the first of Queen *Elizabeth*, and his own Oath, that the King is the only supream Governour of this Realm; answers, the Parliament is the supream power, and the King supream Governour: and yet there *he allowes him a Negative Voice*; and fol. 107. confesseth that Acts of Parliament translated the Crown from the right Heires at Common law, to others who had no good Title; then the Parliamentary Title makes not the King, so powerfull is truth, that it escapes from a man unawares: To make a distinction between supream Governour, and supream Power, is very strange, for who can govern without power?

The King Assembles the Parlia. Vide Speed  
ment by his Writ, Adjournes, Pro. 645. 4. pa.  
rogues, and Dissolves the Parliament, Inst. 27. &  
by the Law at his pleasure, as is evident  
by constant practice, the House  
of Commons never sate after an Ad-  
journalment of the Parliament by the  
Kings

Kings command: Where is the Supreme Power?

18. *Ob.*

The King by his Oath, is bound to deny no Man right, much less the Parliament, to agree to all just and necessary Laws proposed by them to the King. This is the substance of the discourse against the Kings Negative Voice.

*Sol.*

The King is so bound as is set down in the Objection; but who shall judge whether the Bill proposed be just and necessary? For all that they do propose are so pretended and carried in either House, sometimes by one or two Voices; or some few as aforesaid, and certainly as hath been shewen, the King, his Counsel of State, his Judges, Sergeants, Attorney, Solicitor, and twelve Masters of the Chancery, can better judge of them, than two or three, or few more.

Calvin's  
Case 7. pa.  
fol.

Mr. *Pryn*, fol. 45. In his Book of the Parliaments interest to nominate Privy Councillors, calleth the opinion of the *Spencers*, to divide the Person of the King from his Crown, a strange Opinion, and cites *Calvins* Case,

Cafe, but leaves out the Conclusions therein mentioned, *fol. 11*. Master *Prynn* sayth there, let this Opinion be what it will, without the Kings Grace and Pardon it will go very far, and two Acts of Parliament there mentioned are beyond an Opinion: And in his Book of the opening of the Great Seal, *fol. 17*. The Parliament hath no Jurisdiction to use the Great Seal for Pardons general or particular. Where is the Supream Power then?

Master *Prynn* (Opening of the Seal) *pag. 19*. sayth, the Noblemen and State, the day after the Funeral of King *Henry* the third (King *Edward* the first his Son being in the Holy Land) made a new Great Seal, and Keepers of the same; and in *Henry* the sixts time, in the first year of his Reign, the like was done in Parliament. *19. ob.*

*A facto, ad jus*, it is no good Argument, for that in *Edward* the first's time, it was no Parliament, for King *Henry* the third was dead, which Dissolved the Parliament, if called in his time, and it could be no Parliament

*Sol.*

ment of *Edward* the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under the New Seal, it was so suddenly done after *Henry* the thirds Death, King *Edward* the first being then in the Holy Land, it was the first year of his Reign : And no Parliament was held that Year, nor the second Year of his Reign : The first Parliament that was in his Reign, was in the third year of his Reign, as appears by the Printed Acts : Also the making of that Seal was by some Lords then present ; What hand had the Commons in it ? Concerning the Seal made in *Henry* the sixths time, the Protector was *Vice-Roy* according to the course of Law, and so the making of that Seal was by the Protector in the Kings name, and that Protector, *Humphry* Duke of *Gloucester*, as Protector, in the Kings Name, summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of *Henry* the sixth, and the first holden in his time, and Power given by



by Commission to the said Duke, then Protector, to summon that Parliament, *Pryn ibid. fol. 19.* But the new counterfeit Seal was made when the King was at *Oxford*, in his own Kingdom, and not in the Holy Land.

Master *Pryn* in his Book of the two Houses Power to impose Taxes, restrain Malignants against any *Habeas Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and *fol. 15. ibid.* The Parliament hath Power over *Magna Charta* to repeal the same when there is Cause.

This Argument supposeth that they have the Kings Power, which hath appeared formerly they have not: But suppose they had, *Magna Charta* contains many Moral Laws, which by the Law of the Land a Parliament cannot alter, 21 *H. 7. 2. D. and Student, 2. Dialogue.* For example, it saith *chap. 18.* Justice shall not be sold, delayed, nor denied to any Man. But by this Argument the Parliament may make Law to delay, deny, and to sell Justice, which

which surely is a very ill Position to maintain.

What they would have, doth now by the Propositions sent to *New-Castle* to his Majesty appear, whereby they would have him divest himself, and settle in them all his Kingly Power by Sea and Land, and of themselves to have Power, without him, to lay upon the People of this Land what Taxes they think meet, to abolish the Common Prayer-Book, to Abolish Episcopacy, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing Party in both Houses to Steer this Course, and being Chased away with Tumults from *London*, leaves the Houses for these Reasons, (*viz.*)

First, *Because to alter the Government, or Religion, is against the Kings Oath.*

Secondly,

Secondly, *against their Oaths*: For every of them hath Sworn in this Parliament, that His Majesty is the only Supream Governour in all Causes Ecclesiastical, and over all Persons.

Thirdly, This course is against *Magna Charta*, the 1. Chap. and the last, *Salve sint Episcopis omnes libertates sue*, confirmed by thirty two Acts of Parliament: And in the two and fortieth of *Edward* the third, the first Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: And so it is for Judgments at Law, in the 25 of *Edward* the 1. chap. 1, 2. The great Charter is declared to be the Common Law of the Land.

Fourthly, *They endeavour to take away* by their Propositions, the Government of *Bishops*, which is as ancient as Christianity in this Land, and the *Book of Common-Prayer* settled by five Acts of Parliament, and compiled by the *Reformers and Martyrs*,  
and

and Practised in the time of *few Princes.*

Fifthly, these Propositions taking away from his Majesty *all his Power by Land and Sea*, Rob him of that which all his Ancestors, Kings of this Realm, have enjoyed : That enjoyment and usage makes the *Law*, and a Right by the same to his Majesty, *They are against their own Protestations made this Parliament, viz. to maintain his Royal Person, Honour, and Estate; They are against their Covenant*, which doth say, that *they will not diminish his just Power and Greatness.*

For these reasons his Majesty hath left them, and as is believed will refuse to agree to the said *Propositions*, as by the Fundamental Law of the Land he may, having a *Negative Voice* to any Bills proposed.

The result of all is upon the whole matter : That the King thus leaving of the Houses, and his denial to pass the said Propositions, are so far from making him a Tyrant, or not in a condition

condition to govern, at the present ;  
 that thereby he is rendred a *Just,*  
*Magnanimous, and Pious Prince* : So  
 that by this it appears clearly to  
 whom the *Miseries* of these times  
 are to be imputed. The Remedy for  
 all, is, an Act of Oblivion, and a  
 General pardon.

**God save the King.**

**David Jenkins, now  
 Prisoner in the Tower.**

**28. Aprilis, 1647.**

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The

*The Vindication of Judge Jen-  
kins, Prisoner in the Tower,  
the 29. of April, 1647.*

**I** Was convened upon Saturday the  
10 of this moneth of April before  
a Committee of the House of Com-  
mons, wherein Master Corbet had the  
Chair; and I was there to be exami-  
ned upon some questions then to be  
propounded to me; to which questi-  
ons I refused to give any other an-  
swer than that which was set down  
in a paper I then delivered to the said  
Mr Corbet, which followeth in these  
words.

Gentlemen,

**I** stand committed by the House of Com-  
mons for High Treason, for not ac-  
knowledging nor obeying the power of the  
Two Houses, by adhering to the King  
in this warr, I deny this to be Treason,  
for the supream and only power by the  
Laws

*Lawes of this Land is in the King : If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the Kings power, I should confess the power to be in you, and so condemn my self, for a Traitor, which I neither ought nor will do.*

*I am sworn to obey the King, and the Lawes of the Land; you have not power to examin me by those Laws, but by the Kings Writ, Patent or Commission : if you can produce either thereof I will answer the questions you shall propound; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the lawes which I will not do to save my life.*

*You your selves, all of you this Parliament, have sworn that the King is our only and supream Governour; your Protestation, your Vow and Covenant, your solemn League and Covenant, your Declarations, all of them publisht to the Kingdom, that your scope is the maintainance of the Lawes; those Laws are and must be derived to us, and enlivened by the only supream Governour, the Fountain of justice, and the life of the law*

law, the King. The Parliaments are called by his Writs, the Judges sit by his Patents, so of all other Officers, the Cities and Townes Corporate, govern by the the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by his Majesty, I neither can, nor will, nor ought you to examine me upon any questions, asut if as private Gentlemen, you shall be pleased to ask me any questions, I shall realy and truly answer every such question, as you shall demand.

April 10. 1647.

David Jenkins.

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This Paper hath been mis-represented to the good people of this City by a printed one styling it my Recantation, which I own not: and besides is in it self repugnant: (just like these times) the Body falls out with the Head. To vindicate my self from that Recantation, and to publish to the world the reality of the Paper then delivered to Mr. Corbet, and the matter therein contained, I have



have published this ensuing discourse.

No person who hath committed *Treason, Murder, or Felony*, hath any assurance at all for so much as an hour of life, Lands or Goods, without the *Kings grations pardon*, 27. *Hen. 8. chap. 24.*

The King is not *virtually* in the two Houses at *Westminster*, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. *The House of Commons* have declared to the Kingdom in their Declaration of the 28. of *November* last, to the *Scots Papers*, p. 8. *That the King at this time is not in a condition to govern.* No person or thing can derive a virtue to other men, or things, which it self hath not; and therefore it is impossible that they should have a virtue from the King to govern, which they declare he hath not himself to give.

2. The Law of the Land is, *That no person in any Parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes* 5. *Eliz. cap. 1.*

*purposes as if he had never been elected or returned, if before he sit in the house, he take not his oath upon the holy Evangelists, that the Kings Majesty is the only and Supream Governour over all persons in all Causes.* All the members of the said House have taken it, and at all times as they are returned do take it; otherwise they have no colour to intermeddle with the publick Affairs. How does this Solemn and Legal Oath agree with their said Declaration, *That the King is in no condition to govern?* By the one it is sworn, he is the only supream Governour; by the other, that he is not in a condition to govern.

3. The Oath is not, that the King was, or ought to be, or had been, before he was seduced by ill Council, our only and supream Governour in all Causes over all persons; but in the present tense, *that he is our only and supream Governour*, at this present in all Causes and over all persons. So they the same persons swear one thing, and declare to the Kingdom the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation. The

4. The Ministers in the Pulpets do not say, what they swear in the House of Commons. Who ever heard sithence this unnatural Warr, any of their Presbyters attribute that to his Majesty which they swear? The reason is this, their oath is taken at *Westminster* amongst themselves: that which their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their only and supream Governour in all Causes, is contrary to that the Houses do now practice, and to all they act and maintain, The *two Houses forrsooth*, are the only and supream Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keep him prisoner at *Holmby*: so well do their Actions and Oaths agree.

5. They swear now, King *Charles* is their only and supream Governor; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supream Governour, or only and  
E supream

supream, but not any Governour at all : For there is no point of Government, but for some yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtuall power is a meer fiction, their Propositions sent to *Oxford*, to *Newcastle*, to be signed by the King, do prove it so. What needs thisado, if they have the virtual power with them at *Westminster*?

7. To affirm that the Kings power ( which is the virtue they talk of ) is separable from his person is High Treason by the Law of this Land ; which is so declared by that Learned man of the Law, Sir *Edward Cooke* ; so much magnified by this present Parliament, who in the 7 part of his Reports in *Calvins case*, fol 11 saith, thus. *In the reign of Edward the second, the Spencers the Father and Son, to cover the Treason hatched in their hearts, invented this damnable opinion, that homage and oath of Ligeance was more by reason of the Kings Crown, ( that is of his politique capacity ) then by reason of the person of the King: upon which*  
*opinion*

opinion they inferred three execrable and detestable consequences. 1. If the King do not demean himself by reason in the right of his Crown, his Lieges are bound by Oath to remove the King. 2. Seeing that the King could not be reformed by state of Law, that ought to be done per asperum, that is by force. 3 That his Lieges be bound to govern in aid of him, and in default of him; all which were condemned by two Parliaments, one in the reign of Edw 2. called *exilium Hugonis le Spencer*; and the other in *Anno, 1. Ed. 3. chap. 2.*

And that the natural body and politick makes one indivisible body, and these two bodies incorporate in one person make one body and not divers, is resolved as the law of Eng. 1. *Eliz. Ploydon* Co fol. 113. by Sir *Corbet Catlin*, L. Chief Justice of Eng. Sir *James Dyer*, L. Chief Justice of the Common pleas, the *L. Sanders*, L. Chief Baron of the *Exchequer*, and by the rest of the Judges, viz. Justice *Rastall*, Justice *Brown*, Justice *Corbet*, Justice *Weston*, Baron *Frevyl*, *Carus*, and *Powtrel* Sergeant to the Queen, *Garrard* Attorney General, *Carell*

of the *Dutchy*, *Plowden* the learned & man of that age, in the knowledge of the Law, and Customes of the Realm.

9 Hen. 3.  
Magna  
Charta. So  
in every  
age til this  
day, and in  
every  
Kings time  
as appears  
by the acts  
in Print,  
1. part of  
the Inst it.  
Sect. 234.  
in fine  
where ma-  
ny of the  
Law books  
are cited 7,  
Hen. 7. 14.  
12. of He.  
7. 20

8. The Law in all ages without any controversie is and hath been: that no Act of Parliament binds the Subjects of this Land without the assent of the King either for Lands, Goods, or Fame. No man can shew any sillable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land: It the virtuall power be in the Houses, there needs no assent of the Kings. The stiles of the Acts printed from 9 Hen. 3. to 1. Hen. 7. were either *The King ordaines at his Parliament*, &c. or *the King Ordaineth by the advice of his Prelates and Barons*, and *at the humble Petition of the Commons*, &c. In Hen. 7. his time the Stile altered, and hath sithence continued thus; *It is ordained by the Kings Majesty, and the Lords spiritual and temporal, and Commons in this present Parliament assembled*: So that always the assent of the King giveth the life to all, as the soul to the body; and therefore

therefore our Law-bookes call *the King, the Fountain of Justice, and the life of the Law.*

9. Mercy as well as Justice, be-<sup>2. Hen. 4. c.</sup>  
 longs by the Law of the Land onely<sup>22.</sup>  
 to the King. This is confessed by<sup>4 part inst.</sup>  
 M. Pryn, and it is so without any<sup>42.</sup>  
 question: The King can onely par-<sup>Mr. Pryn</sup>  
 don, and never more cause to have<sup>in his trea-</sup>  
 sufficient pardons then in such trou-<sup>tle of the</sup>  
 ble some times as these, and God send<sup>Great Seal,</sup>  
 us Pardons and Peace: None can<sup>fol. 17. 27.</sup>  
 give any Pardon, but the King by the<sup>Hen. 8. C.</sup>  
 law of the Land: *The whole and sole*  
*Power of Pardoning Treasons and Fe-*  
*lonies belongs to the King* are the words  
 of the Law, and it is a delusion to  
 take it from any other, and utterly  
 invalid.<sup>27. Hen. 8 cap. 24.</sup>

10. Queen Elizabeth summoned  
 her first Parliament, to be held the  
 23d. of Jan. in the first Year of her  
 Majesties Reign; The Lords and  
 Commons Assembled by force of the  
 same Writ; the 21st. day the Queen  
 fell sick, and could not appear in her  
 person in Parliament that day, and  
 therefore Prorogued it untill the 25  
 of the same Month of January: Re-

3. Of Eliz. solved by all the Judges of England, that  
 Diet. 293. the Parliament began not the day of the  
 return of the Writ, viz. the 23 of Jan.  
 when the Lords and Commons appeared,  
 but the 25 of the said Month when the  
 Queen came in Person; which sheweth  
 evidently that this virtual presence is  
 a meer deluding fiction that hath no  
 ground in Law, reason, or sence. They  
 have the King now a Prisoner at  
 Holmby, with Guards upon him, and  
 yet they govern by the virtual Power  
 of their Prisoner. These are some few  
 of the causes and reasons which mo-  
 ved me to deliver that paper to Mr.  
 Corbet, which I am ready to justify  
 with my life, and should hold it a  
 great honour to die for the Honou-  
 rable, and Holy Laws of the Land:  
 that which will save this Land from  
 Destruction, is, an *Act of Oblivion*  
 and His Majesties Gracious general  
 Pardon, the Souldiers their *Arrears*,  
 and every Man his own, and truth and  
 Peace *Established in the Land*, and a  
 favourable regard had to the satisfacti-  
 on of tender Consciences.

Apr. 29. 1647.

David Jenkins.

T H E



T H E  
A R M I E S  
INDEMNITY,  
With Addition.

T O G E T H E R ,  
With a Declaration shewing how  
every Subject of *England* ought to  
be Tryed for Treasons, Felonies,  
and all other Capital Crimes, as it is  
set down in the Laws of the *Land*.

---

By *DAVID JENKINS*, now  
Prisoner in the  
Tower of L O N D O N.

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Printed in the Year, 1647. And  
Reprinted in the Year, 1681.

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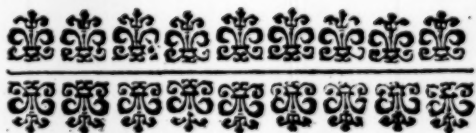
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## T H E

*Armies Indemnity, &c.*

**U**Pon the Publishing of the Ordinance of the 22d. of *May* last, for the *Indemnity* of the *Army*, certain Gentlemen well affected to the Peace of the Kingdom, and safety of the Army, desired me to set down in Writing, whether by the Law of the Land, the said Ordinance did secure them from danger as to the matters therein mentioned : For whose satisfaction in a business wherein the lives and fortunes of so many men were concerned, and the Peace of the kingdom involved, I conceived I was bound in duty and conscience faith-

fully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Army by the Law of the Land is apparent to all Men: It is High Treason by the Law of the Land to levie War against the King, to compass or imagine his Death, or the Death of his Queen, or of his eldest Son, to counterfeit his Mony or his Great Seal; they are the very words of the Law: Other Treasons than are specified in that Act, are declared to be no Treasons until the King and his Parliament shall declare otherwise, they are the very words of the Law; King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason than there is declared; as appears by the Lord Cook, in the places cited in the Margin; a Law Book published by order of the House of Commons this Parliament, as appears in the last leaf of the 2d. part of the Institutes published likewise by their Order.

3 *Pars Instit.*  
pag. 22. & 2  
*Pars Instit. p.*  
23. 48. 29.  
3 *Pars Instit.*  
*cap. Treason.*  
p. 9, 10.  
& 12.

The Resolutions of all the Judges of *England*, upon the said Statute of the 25. *Ed. 3.* (as appears in the said third part of the Institutes, *Chap.* High-Treason) have been, that to Imprison the King until he agree to certain demands is High-Treason; to seise his Ports, Forts, Magazine for War, are High-Treason; to alter the Laws is High-Treason.

Mr. S. John the Sollicitor in his speech upon the Arraignment of the Earl of Strafford. Printed by order of the House of Commons.

pag. 7. 13.

The word King in the Statute of 25 *Ed. 3. cap. 2.* must be understood of the Kings natural Person; for that person can only die, have a Wife, have Son, or be Imprisoned.

The Priviledge of Parliament protects no Man from Treason or Felony, howbeit he be a Member; much less can they protect others: Those who cannot protect themselves, have no colour to make Ordinances to Protect others who are no Members.

4 *Pars insti.*  
9. *parl. p.*

25.

The Statute of 11. *Hen. 7. cap. 1.* 11 *H. 7.* doth by Express Words free all Persons who adhere to the King.

The

*Stamford 1.*  
*2. fol. 99.*  
*18 E. 3. Statutes at large 144.*  
*20. Ed. 3. c. 1. 11. R. 2.*  
*c. 10. 4 pars in stat. pag.*  
*23. 48, 29.*

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more do then repeal all the Laws of the Land, the whole and sole Power by Law to pardon all Treasons, Felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27 H. 8. c. 24. and the Law of the Land in all times.

Having shewed the danger of the Army by the Law of the Land, next consider the Ordinance of the Lords and Commons published the 22d. of May last for their Indemnity; by the ensuing discourse it doth appear they have no Indemnity at all thereby.

The Indemnity proposed by the Ordinance is for any Act done by the Authority of the Parliament, or for the service or benefit thereof; and that the Judges, and all other Ministers of Justice shall allow thereof.

This Ordinance cannot secure the Army for these reasons.

1. Their

1. Their Judges are sworn to do Justice according to the Law of the Land, and therefore the Judges must be forsworn Men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no Man can believe they will Perjure themselves so palpably and visibly in the eye of the World.

2. All Tryals for Treasons, Felonies, Robberies, and such like capital Offences, are by the Law of the Land to be by Indictment of a Jury appointed out of the neighbourhood where the offence was done. There is no Common Jury Man but understands what the Law is in these cases as well as the best Lawyers, and the Law makes the Jury Judges of the Fact, whereby the Souldier is left to their Mercy whom he hath offended (as some of them have lately had woeful experience, and thereupon do rightly apprehend their danger) Now no Man can think that the Jurors will Perjure themselves to acquit the Souldiers for Robbing and Plundering of the Countries, and thereby utterly destroy

3. *Pars insti.*

*pag. 22.*

2 *pars insti.*

47, 48.

1 *pars insti.*

193.

Princes

*Case 8. Rep.*

*Mag. Char.*

*cap. 29.*

37 *Ed. 3. c.*

28. *E. 3. c. 3.*

27 *E. 3. c. 8.*

42 *E. 3. c. 3.*

*Declaration*

*of the Army*

*presented at*

*Walden,*

*and Printed*

*by the ap-*

*pointment*

*of the Offi-*

*cers subscri-*

*bed.*

destroy their own Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other Mens Horses or Goods is not by the Authority of Parliament, or for the service and benefit thereof, the Souldier dies for it; they may say to Steal or Rob any Man of his Goods is not for the Parliaments Service but against it, which was always the fence of the People, and doubtless the Jurors will not think otherwise.

*4 pars insit.*

*pag 1.*

*3 pars insit.*

*pag 22.*

*1 pars insit.*

*pag. 1.*

*28.H.8 f 1*

*Dier 38.H.*

*8.fol. 60.*

*12H.7 20.*

*1 pars insit.*

*159.*

*Princes*

*Cafe.*

*8 Reports.*

4. This Ordinance is restrained to the Authority service or benefit of the Parliament. The Lords and Commons make no more a Parliament by the Law of the Land, then a Body without a Head makes a Man; for a Parliament is a Body Composed of a King their Head; the Lords and Commons the Members. All three together make one Body, and that is the Parliament and no other; and the Judges may, ought, and I believe, will according to their Oaths proceed, as not bound at all by this Ordinance. For it is restrained to the Authority of Parliament service or benefit



benefit thereof, whereas the two Houses are not the Parliament but only parts thereof, and by the abuse and misunderstanding of this word *Parliament* they have miserably deceived the People.

5. This Ordinance is against their 28 August, Ordinance which expressly prohibits 1642. plundering, and so there is one Or- Coll. of Or. nance against another, whereby their first part, Judges have an out-let to proceed 565. 592. on the one or the other, and thereby 605 feve- the Army hath no manner of secu- ral Ordi- nances. rity.

6. The word *Parliament* is a French 1 pars instit. word (howbeit, such Assemblies 109, 110. were before the *Norman Conquest* 5 pars p. 49. here,) and signifies in that language to consult and treat; that is the sence of the word *Parler* in the French Tongue. The Writ whereby the two Houses are Assembled, which is called the Writ of Summons of Parliament, at all times, and at this Parliament used, and which is the Warrant, Ground, and Foundation of their Meeting, is for the Lords of the House of Peers, the Judges and Kings Council to consult and treat with

with the King (that is the *Parler*) of great concernments, touching *first* the King, *secondly* the defence of his Kingdom, *thirdly* the defence of the Church of *England*. It cannot be a Parliament that will not Parle with their King, but keep him in Prison, and not suffer him to come to them and Parle, and therefore the Law, and sence, and reason informing every Man, that is no manner of Parliament (the King with whom they should Parle, being so restrained, that they will not Parle with him) the Army hath no manner of security by this Ordinance; for their indemnification refers to that which is not in being untill the King be at Liberty.

The common Soldiers second Apol. Six Grievances of the Army, published 15 May last. Three Grievances of Coll. Rich's Regiment.

7. It is more than probable that their Judges before the last Circuit had Instructions to the effect of this Ordinance, but they the Judges making conscience of their Oath, laid aside the said Instructions, and ought, and may, and it is believed will no more regard this Ordinance, than the said Instructions: What was done in the last Circuit the Army well knows,

knows, touching many of their Fellow-Souldiers.

8. The Houses in their first Proposition to his Majesty for a safe and well grounded Peace, sent to *Newcastle* to desire a Pardon from his Majesty for themselves : They who desire a pardon, cannot grant a Pardon (common reason dictates this to every Man) and therefore that the Army should accept an Indemnity from them who seek for it themselves, or should conceive it of any manner of force, is a fancy : So that no Man in the whole Army but may apprehend, that it is vain, and a meer delusion.

9. His Majesty by his Gracious Message of the 12 of *May* last, hath offered an Act of Oblivion, and a general Pardon to all his People ; this done, the Law doth Indemnifie the Army (without all manner of Scruple) for any thing that hath been done ; for it is an Act of Parliament when the King and two Houses concur, and binds all Men. There is no safety by the Ordinance ; there is safety by an Act of Parliament : And will not reasonable Men prefer that

that which is safe before that which is unsafe ?

10. His Majesty by his said Letter agrees to pay the Arrears of the Army ; I am sure that it is a Publick Debt, and the chiefest and the first that by the two Houses should be paid, and before any Dividend or Gratuities bestowed among themselves ; for their Blood, Limbs and Lives have put and kept both the Houses at rest in the Power they have : So by this concurrence of his Majesty for your Indemnity, and for your Arrears the Army have not an Ordinance, or the publick Faith, but the Law of the Land to make sure unto them their Indemnity for all Acts, and for their Arrears, and therewith also bring *Peace* to the Land.

Mr. Pym's  
Speech a-  
gainst the  
Earl of  
Strafford,  
p. 16.

11. The Kingdom and People generally desire these things. To such an Army just and reasonable things must not be denied ; the things formerly proposed are most just and reasonable, you may have them if you will ; if you will not, you render this Kingdom miserable, wherein  
you

you will have your shares of Miseries: The Head and the Body are such an Incorporation as cannot be Dissolved without the destruction of both.

Six considerations  
Printed by  
the command of  
the House  
of Commons.

The Additional Ordinance of both Houses passed the fifth of *June* instant for the fuller Indemnity of the Army, makes nothing at all to the matter: For that extends not to Felony, Homicide, Burglary, Robbery, or any other *Capital Crime*, which is the main business insisted upon, and most concerneth the Souldiers security.

12. The both Houses in the said additional Ordinance say, that it is expedient that all Offences be pardoned and put in Oblivion: Pardon and Oblivion cannot be understood to be for a time, but for ever; and they themselves confess, that an Ordinance is not binding but *pro tempore*, which with the most advantageous Interpretation can be but a reprieve or delay of the Execution of the Law; and therefore that cannot Pardon or put in Oblivion by their own shewing.

But

27 H. 8 c. 24. But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons, of what Estate soever, have any Power to Pardon Treason, Felony, or any other Offences, but the King only, who hath the sole and whole Power to Pardon all such Crimes whatsoever. And in the same manner an Ordinance is of no Authority at all to take away the right of private Mens Actions, by any evidence it can give: In truth all the evidence that this *Ordinance* will give, is, that it records to Posterity nothing but a lawless and distempered time.

For Remedy thereof I say again, it is a certain truth, this Kingdom without an Act of Oblivion, and a General Pardon, and the payment of Souldiers Arrears, and a meet regard had to tender Consciences, will unavoidably be ruined.

*June, 10. 1647.*

David Jenkins,  
*Prisoner in the Tower  
of London.*

Sundry

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Sundry Acts of Parliament mentioned and Cited in the Armies Indempnities: Set forth in Words at large, for the better satisfaction of such as desire to be rightly Informed.

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25 Edw. Chap. 2.

*A Declaration what Offences shall be Adjudged Treason.*

**W**hereas divers Opinions have been befoze this time in what case Treason shall be said, and in what not: The King at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth: That is to say, When a Man doth compass or imagine the Death of our Lord the King, or of our Lady the Queen, or of the Eldest Son and Heir: Or do violate the Kings Companion, or the Kings Eldest

Eldest Daughter Unmarried, or the  
 Wife of the Kings Eldest Son and  
 Heir; or if a Man do Levis War a-  
 gainst y<sup>e</sup> Lord our King in his Realme,  
 or be adherent to the Kings Enemies  
 in his Realme, giving to them Aid and  
 Comfort in the Realme, or else where,  
 and thereof be probably attainted of  
 open deed by People of their condition:  
 And if a Man Counterfeit the Kings  
 Great or Pryvy Seal, or his Mony:  
 And if any Man bring false Money  
 into this Realme, counterfeit to the Mo-  
 ney of England, and the Money called  
 Lusburgh, or other like to the said Mo-  
 ny of England, &c.

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## II. Hen. 7. Chap. I.

*None that shall attend upon the King, and do him true Service, shall be Attainted, or forfeit any thing.*

**T**He King our Soberaign Lord calling to remembrance the duty of Allegiance of his Subjects of this his Realm, and that they by reason of the same are bound to serve their Prince and Soberaign Lord for the time being in his Wars, for the defence of him and the Land against every Rebellion, Power, and Might, raised and reared against him, and with him to enter and abide in service in Battel, if case so require, and that for the same service what Fortune ever fall by chance in the same Battel against the Wind and Will of the Prince (as in this Land sometime passed hath been seen) that is not reasonable, but against all Laws, Reason, and good Conscience, that the  
said

said Subjects going with their Soberaign Lord in Wars, attending upon him in his Person, or being in other places by his Commandment within this Land or without, any thing should lose or forfeit for doing their Duty or Service of Allegiance. It be therefore Ordained, Enacted and Established by the King our Soberaign, by the Advice and Assent of his Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled and by Authority of the same, that from henceforth no manner of person or persons whatsoever he or they be, that attend upon the King and Soberaign Lord of this Land for the time being, in his Person, and do him true and faithful Service of Allegiance in the same, or be in other places by his Commandment in his Wars within this Land, or without, that for the said deed and true duty of Allegiance, he or they be in no wise convict or attaint of High Treason, nor of other Offences for that cause, by Act of Parliament, or otherwise by any Process of Law, whereby he or any of them shall lose

or forfeit Life, Lands, Tenements, Rents, Possessions, Hereditaments, Goods, Chattels, or any other things; but to be for that deed and service utterly discharged of any Vexation, Trouble, or Loss. And if any Act or Acts, or other Process of the Law hereafter thereupon for the same happen to be made contrary to this Ordinance, that then that Act or Acts, or other Process of Law whatsoever they shall be, stand and be utterly void. Provided always, that no person or persons shall take any benefit or advantage by this Act, which shall hereafter decline from his or their said Allegiance.

Cap. 22. in the Statute of 27. H 8. It is enacted that no Person or Persons, of what Estate or Degree soever they be of, shall have any Power or Authority to Pardon or remit any Treason, Murders, Manslaughters, or any kind of Felonies, &c. but that the King shall have the sole and whole Power and Authority thereof united and knit to the Imperial Crown, as of right it appertaineth, &c. And in the same Statute it is enacted further,

ther, That none shall have Power, of what Estate, Degree, or Condition soever they be, to make Justices of Eyre, Justices of Assize, Justices of Peace, &c. but all such Officers and Ministers shall be made by Letters Patents under the Kings Great Seal, in the Name, and by the Authority of the King and his Heirs and Successors, Kings of this Realm.

In the first year of Queen *Mary*, and the first Chapter. It is enacted by the Queen, with the consent of the Lords and Commons, That no Deed or Offence by Act of Parliament made Treason, shall be taken, Deemed, or Adjudged to be High Treason, but only such as be declared and expressed to be Treason by the Act of Parliament made 25 Ed. cap. 2. before mentioned.

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*A Declaration of M. David Jenkins, now Prisoner in the Tower of London, one of His Majesties Judges in Wales, for tryals of Treasons, Murthers, Felonies, and all other capitall crimes, that they ought only to be by Juries, and not otherwise, unless it be by Act of Parliament.*

**T**He Common Law of this Land is, that every free-man is subject to a tryall by Bill of Attainder in Parliament, wherein his Majesty and both Houses must necessarily concur, for that tryall and attainder is an *Act of Parliament*, to which all men are subject.

a Magna Chart. 29. 2 part Inst. fol. 28, 29. 46. 48, 49, 50. composed by Sir Ed. Cook, and published by Order of the House of Commons in May, 1641. 4 pars Instit. fol. 41. 356.

(a) No man shall otherwise be destroyed, &c. but by the lawfull judgment of his Peers, or by the common law of the Land. Peers to Noblemen are Noblemen, Peers to the Commons are Knights, Gent. &c. Judgment of Peers refers to Peers, those words, *The Law of the Land*, refers to the Commons; the Law of the Land is for the tryall of the life of a free Commoner, by Indictment, Presentment of good and lawfull men where the deed is done, or by Writ original of the common law: all this is declared in *Mag Charta* c. 29. and by 25 *Ed.* 3. c. 4. 28 *Ed.* 3. c. 3. 37 *Ed.* 3. c. 1. 42 *Ed.* c. 3. If the Lords will try any man by an Ordinance, they destroy that excellent Act of *Magna Charta*, and all those other good Laws.

Sir *Simon de Bereford*, a free Commoner of England was condemned by the Lords to death by an Ordinance; which after the Lords better considering the matter, that they might be acquitted of that sentence, became suters to the King, that what they had so done, in future time might

might not be drawn into president, because that which they had so done, was against the Law: (b) with this agrees the practice and usage of all times in this Land, all the free Commoners of this Kingdom have alwayes been tryed and acquitted or condemned in capital causes by Jurors of their equals.

b Rot. par.  
1 roul 4. E.  
2. Num. 2.  
par. Intt.  
pag. 50.  
with this  
agrees Sir  
Jo. Lees  
Case, Rot,  
Par. 42. F.  
3. Num 22.  
23. 2 in tit  
fol. 5.

An Ordinance bindeth not in Law at all, (c) and but *pro tempore*, as the two Houses now affirm, a mans life cannot be tryed by that which is not binding, and to continue for all times, for a life lost cannot be restored.

c See 4  
part inst.  
fol 23. 48.  
232 298.  
292. 2. part  
Intt. fol. 47  
48 157.  
643. 4 H. 7.  
fol 181 H.  
7 fol. 14.  
3 part Intt  
fol. 41.

By an Aët of Parliament of the 1 and 2 of *Philip* and *Mary* ch. 10. It is enacted that all tryals for Treason hereafter to be had, shall be according to the course of the common Law, and not otherwise.

If the crime charged upon any be Treason against the two Houses (against the Parliament it cannot be, for there is no Parliament without the King) *that is no Treason in Law,*

as

as appears by 25 *Ed* 3. *chap.* 2. 11  
*R.* 2. *chap.* 3. 1 *Hen.* 4 *ch.* 10. 1 and 2  
*Philip and Mary chap.* 10. 3 *part of the*  
*Institutes pag.* 23.

*d* Dr. *Bo-*  
*nams* *Cafe*, party in the same cause; and there-  
 8. part of fore the House of Peers being a party  
*Cookes* *Re-* touching the crime charged upon any  
*ports* man whom they would try by an Or-  
 dinance for Treason against both  
 Houses, cannot be a Judge.

*e* Petition By the Petition of Right, (*e*) if  
 of Right. any man deserve death, he ought to  
 3 *Car. Regis.* suffer the same according to the Laws  
 of the Land established, and not  
 otherwise: but an Ordinance of the  
 Lords is no established law.

The Protestation, the Vow and Co-  
 venant, the solema League and Co-  
 venant, the declarations of both Hou-  
 ses, had, made and published sithence  
 this unnaturall War, are amongst o-  
 ther things sworn and set down to be  
 for the maintainance of the Lawes;  
 2 pars *Inst* the people of this land ought to enjoy  
 fol 89. the benefit of their Birth-right the  
 Law of the Land, and the making  
 good



good of the said Protestation, Vow and Covenant, League and Covenant, and Declarations, otherwise truth must be said, and will be said, and there is brought in a new arbitrary and tyrannical Government.

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more; and the case differs in case any appeal be made from a tryal by Ordinance to a tryal at common Law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember, that his Majesty and his Progenitors have made them a house of Peers, they are trusted to counsell him in peace, (f) and defend him in war, his Majesty <sup>f Nevells</sup> in Parliament is to consult and treat <sup>case 8 part</sup> with the Peers, and with his Councell <sup>Cooks</sup> at Law, Judges, his Sergeants, <sup>Reports</sup> Attorney, and Solicitor, and Masters <sup>g 4 Pars in-</sup> of the Chancery; the Lords and that <sup>stit fol. 4.9.</sup> Council by the respective Writs of <sup>29 Ed. 3. c.</sup> Summons to Parliament, are to give <sup>I. 15. 3 part</sup> counsel, (g) the House of Commons <sup>Inst. f. 135.</sup> by their Writ to perform and consent.

In

H. 1. H. 7.  
fol. 20

\* 14. E. 3  
c. 5.

In the House of Lords the Court of Parliament only is, for they only examine upon oath, (*b*) with them the King in person sits, and by them there erroneous judgments \* (upon a Petition to his Majesty for obtaining of a Writ of Error) by the advice of the Judges, are reversed, or affirmed, &c. The Lords are to remember that their eminency and grandeur is preserved by the Lawes, if they leave all to will, and dishonour their King and make nothing of the Lawes, they will make nothing of themselves in the end.

And therefore it is well worth your Observation what was said by M. John Pym a member of the House of Commons in his Speech against the Earl of Strafford, in the beginning of the Parliament, which Speech is published by the express order of the House of Commons, the words are these. *The Law is that which puts a difference betwixt good and evil, betwixt just and unjust, if you take away the Law all things will fall into a confusion, every man will become a Law unto himself, which in the depraved condition*  
of

of humane nature must needs produce many great enormities : Lust will become a Law, and envy will become a Law, Covetousness and Ambition will become Lawes, and what dictates, what decisions such Lawes will produce, may easily be discerned, (i) &c. They that love this Common-wealth as things now stand, will use all meanes to procure an Act of Oblivion, a generall pardon from his Majesty, the Souldiers their Arrears, and tender consciences a just and reasonable satisfaction, else we must all perish, first or last.

i See 1 part  
book deell.  
pag. 140.  
163.

Mai. 17. 1647.

*God preserve His Majesty, and the Lawes wherein their Lordships and the whole Kingdom are concerned.*

*David Jenkins prisoner  
in the Tower of London.*



THE  
CORDIAL  
OF  
Judge JENKINS.  
FOR

The Good People of LONDON.

*In Reply to a thing, called,*

An Answer to the Poyso-  
nous Seditious Paper of Master  
*David Jenkins* ; By *H. P. Ba-*  
*rister of Lincolns Inn.*

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Printed in the Year, 1647. And  
Reprinted in the Year, 1681.

Si va a la casa de la  
madre y a la de la



T H E

*Cordial of Judge J E N -*  
*K I N S , for the*  
*Good People of L O N -*  
*D O N .*

**A**fter the said Mr. *H. P.* hath made a Recital of the Heads of my *Vindication*, he deduced his Answer unto these eight Particulars, which follow *verbatim*.

I.

*It cannot be denied, but the Parlia-*  
*ment sits by the Kings Writ, nay, if*  
*Statute*

*Statute Law be greater then the Kings Writ, it cannot be denied but the Parliament Sits, or ought to Sit by something greater than the Kings Writ: And if it be confessed that the Parliament Sits by the Kings Writ, but does not act by the Kings Writ, then it must follow, that the Parliament is a void vain Court, and Sits to no purpose; nay, it must also follow, that the Parliament is of less Authority, and of less Use than any other Inferiour Court: Forasmuch as it is not in the Kings Power to controul other Courts, or to prevent them from Sitting or Acting.*

## 2.

*This is a gross non sequitur, the Kings Power is in himself; Ergo, it is not derived to, nor does reside virtually in the Parliament. For the light of the Sun remains imbodyed, and unexhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the Air; and who sees not that the King, without emptying himself, gives Commissions daily of Oyre and Terminer to others, which yet himself*



Self can neither frustrate nor elude? but for my part I conceive it is a great error to infer that the Parliament hath only the Kings power, because it hath the Kings power in it: for it seemes to me, that the Parliament does both sit and Act by concurrent power, devalued both from the King and Kingdom; and in this some things are more obvious and apparent than in others. For by what power does the Parliament grant Subsidies to the King? if only by the power which the King gives, then the King may take Subsidies without any grant from the Parliament: and if it be so by a power, which the people give to the Parliament; then it will follow the Parliament hath a power given both by King and Kingdom.

## 3.

The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer; for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseeem a superior to prefer  
suit

*suite to an inferiour for matters in themselves due. God himself hath not utterly disdained to beseech his owne miserable; impious, unworthy Creatures; besides, 'tis not our Tenet, that the King hath no power, because he hath not all power, nor that the King cannot at all promote our happiness, because he hath no just claim to procure our ruine.*

## 4.

*We affirm not, that the Kings power is separated from his Person, so as the two Spencers affirmed, neither do we frame Conclusions out of that separation, as the two Spencers did, either that the King may be removed for misdemeanors, or performed per asperte; or that the Subject is bound to govern in ayd of him; we only say, that his power is distinguishable from his person, and when he himself makes a distinction betwixt them, commanding one thing by his Legal Writs, Courts, and Offices, and commanding another thing extrajudicially by word of Mouth, Letters, or Ministers, we are to obey his power rather than his person.*

## 5. We

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him *quarto modo* : For if the King pardon him which hath Murthered my Son, his Pardon shall not cut me off from my Appeal; and 'tis more unreasonable, that the Kings pardon should make a whole State which hath suffered remediless than any private Man. So if the King should deny Indemnity to those which in the fury of War have done things unjustifiable by the Laws of Peace, and thereby keep the Wounds of the state from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And if his will not hold; yet this is no good Consequence, the King is absolute in point of Pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies, therefore it hath no Power in other Matters.

## 6.

*The Parliament hath declared the King to be in no condition to Govern : But this must not be Interpreted rigidly, and without distinction ; for if the King with his Sword drawn in his hand, and pursuing the Parliament and their Adherents as Rebels, be not fit for all Acts of Government, yet 'tis not hereby insinuated that he is divested of the habit or right of Governing : If he be unqualified now, he is not unqualified for the future ; if he may not do things destructive to the Parliament, he is not barred from returning to the Parliament, or doing Justice to the Parliament. This is a frivolous Cavil, and subterfuge.*

## 7.

*We Swear, that the King is our Supreme Governour over all persons, and in all causes ; but we do not Swear he is above all Law, nor above the safety of his People, which is the end of the Law, and indeed Paramount to the Law*

*Law it self. If he be above Law, or  
 lyable to no restraint of our Law, then  
 we are no freer then the French or the  
 Turks; and if he be above the prime  
 end of Law, common safety, then we  
 are not free as the French or Turks;  
 for if the total Subversion of the French  
 or Turk were attempted, they might by  
 Gods Law, Imprinted in the Book of  
 Nature, justifie a self-defence; but we  
 must remedilessly perish, when the King  
 pleases to command our Throats. Be-  
 sides, how atchieved the King of Eng-  
 land such a Supremacy above all  
 Law, and the Community it self, for  
 whose behoofe Law was made? If  
 Gods donation be pleaded, which is not  
 special to him, or different from what  
 other Kings may pretend to, then to  
 what purpose serve our Laws, nay, to  
 what purpose serve the Laws of other  
 Countreys? For by this general dona-  
 tion, all Nations are Condemned to all  
 Servitude as well as we; If the Law of  
 this Land be appealed to, what Books  
 hath Mr. Jenkins read, where hath he  
 found out that Lex Regia, whereby the  
 People of England have given away  
 from themselves all right in themselves?*

*Some*

*Some of our Books tells us, that we are more free then the French; that the King cannot oppress us in our Persons or Estates, by Imprisonment, denying Justice, or laying Taxes without our Consents: Other Books tell us, that the safety of the People, is the Supream Law, and that the King hath both God and the Law for his Superior. But all this is nothing to Learned Mr. Jenkins.*

## 8.

*We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings Assent: Yet this is still to be denyed, that therefore without this Assent particularly exprest, the two Houses can do nothing, nor have any Virtual Power at all, no, not to examine Mr. Jenkins, ner to do any other thing of like nature, though in order to publick Justice and Safety. I have done, and wish Mr. Jenkins would call in and lick up again his Black, Infamous, Execrable Reproaches, so filthily Vomited out against the Parliament.*

*To the first.*

I Was Examined by a Committee appointed by the House of Commons: I say, and said, that the House of Commons have no Power to examine me; for that it is no Court; every Court hath Power to examine upon Oath; this Power the House of Commons never claimed: The Court of *Pie-powders*, *Court Baron*, *Hundred Court*, *County Court*, and every other Court of Record, or not of Record, hath power to examine upon Oath: and an examination without Oath is a Communication only; examination in Law is upon Oath.

5 H. 4. c. 3.  
3 H. 6. 46.  
19 H. 6. 43.  
35 H. 6. 5.

There is no Court without a Power of Tryal; the House of Commons hath no Power to try any Office, nor ever practised it by Bill, Indictment, Information, Plaint, or Original, Writt, to reduce it to Tryal, nor to try it by Verdict, Demurrer, or Examination of Witnesses upon Oath, without which there can be

Sir *Anthony Maynes*  
*Cass. Cook.*  
part. Reports, Lit.  
2. lib. Sect.  
194. 6. H. 4.

no condemnation or judgment; and that which can attain to no reasonable end, the Laws reject as a thing *inutile* and useles; *Sapiens incipit à fine.*

4 par. inst.  
fol. 4 & 9.

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum*; to what? to such things *Qua ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons; that *consilium* which that Writ intends, is cleared partly by the Writ for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peers of the Kingdom, for and touching the great concerns of the Commonwealth (for the King never sits in the House of Commons;) and this also is made evident by the Writs to the Prelates Peers, Judges, and to his Councell at Law; the words in their Writ are; *To appear and attend the Parliament, consilium impensuri*, the one doth *consulere*, the other *facere & consentire.*

The House of Lords, where the Kings sits in person, assisted by his Lords,



Lords, Judges, Sergeants, Attorney, 7 H.1.28.  
 Sollicitor, Masters of the Chancery, 1 H.5.20.  
 is a Court of Record to many purpo- 13 E.3. ca.  
 ses; set down in the Books of Law, 5.4. pars,  
 and the Statutes of the Land, and that inst. pag.  
 Court is only in the House of Lords, 21.  
 where the King sits.

A Court must either be by the Kings Patent, Statute Law, or by the Plowd.  
 Common Law, which is common Com. 319.  
 and constant usage; the House of  
 Commons hath no Patent to be a  
 Court, nor Statute Law to be a Court,  
 nor common usage; they have no  
 Journall Book, but since E. 6. time:  
 was there ever Fine by the House of  
 Commons estreated into the Exche-  
 quer? For murder or Felony they  
 can imprison no man, much less for  
 Treason; that House which cannot  
 do the less, cannot do the greater.

It is ordained, that no man shall be 25. E.3. c4.  
 imprisoned or put out of his Fran- 3 Car. Pe-  
 chise by the King or his Councell, tition of  
 but upon Indictment or Presentment, Right.  
 of his good and lawfull Neighbours  
 where the deed is done, or by origi-  
 nal Writ at the Common Law, and  
 so is *Lex Terra* the Law of the Land  
 men.

mentioned in *Magna Charta*, cap 29. expounded, and the said *Magna Charta*, and *Charta de Foresta* are declared by the Statute of 25. E. 1. c. 1. to be the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem & consuetudinem Regni Anglia*, as appears by all proceedings in all Courts, and by all Commissons: and therefore the House of Commons by themselves, proceeding not by Indictment, Presentment, or Original Writ, have no power to imprison men or put them out of their Franchise.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I have only in my Paper delivered to M. Corbet applied myself to the Committee, that had no power to examin me, but I never thought, said, or wrote, that the Parliament had no power to examine me: the Law and Custom of this Land is that a Parliament hath power over my life, liberty, land, and goods and over every other subject, but the House of Commons of it self hath no such power. For

4. pars Instit. pag. 1.

3 pars Instit. pag. 23

12. H. 7. 20.

Princes

Cafe. 8 par.

Cook. par.

Instit. p. 159.

14 H. 8. 3.

Dyer. 38.

H. 8. 60.

For the Lord *Cooks* relation, that 1 Pars Inst. the House of Commons have imposed <sup>19.b.</sup> Fines, and imprisoned men in Queen *Elizabeths* time, and since; Few Facts of late time never questioned, make no power, nor Court; *a facto ad ius* is no good argument; for the words of the Statute of 6 H.8 c 16. that a licence to depart from the House of Commons for any member <sup>4 Pars Inst.</sup> thereof, is to be entred of record <sup>c. Parl.</sup> in the Book of the Clerk of the Parliament, appointed or to be appointed <sup>Hobbarts Reports,</sup> for that House, doth not conclude <sup>fol. 152.</sup> that the House of Commons is a Court of Record.

For first, that Law of 6 H.8. c. 26. handles no such question, as that, whether the House of Commons be a Court; it is a maxime in all Laws, *Lex aliud tractans nil probet*, the word (*Record*) there mentioned, is only <sup>Hobbarts Reports,</sup> a memoriall of what was done and <sup>sol. 152.</sup> entred in a Book: A Plaint removed <sup>\* Fitz, Na. Br. 70.</sup> out of the County-Court to the Court <sup>Fitz. Nat. Br. 13.</sup> of the Common Pleas, hath these words in the Writ of remove, *Recor* <sup>12 H. 433</sup> *dari facias* <sup>34. H. 6. 49.</sup> *\* loquelam, &c.* and yet the County Court is no Court of Record;

G

and

and so for ancient Demefne in a writ of false judgment, the words are *Recordary facias loquelam, &c.* and yet the Court of ancient Demefne is no Court of Record; and fo of a Court Baron, the Law and custom of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custom.

4 Part In-  
stit. Tit.  
Parliam.  
pag. 23.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a delinquent (*Rege dissentiente*) the King contradicting it under his Great Seal. *Michel*, and others of late were condemned by the prosecution of the House of Commons in K. *James* his time; did King *James* ever contradict it? and so of ancient times, where the House of Peers condemned the Lord *Latimur* in 50. E.2. the Kings pardon freed him: which shews cleerly, that the Kings exprefs or implied assent must of necessity be had to make a Delinquent; the execution of the sentence is in the Kings name.

The Gentleman saith, *That the Parliament sits, or ought to sit by something greater than the Kings Writ. &c.* No

No Parliament did ever sit without <sup>4</sup>Pars, Inst. the Kings Writ, nor could ever Par- <sup>P.4, & 6.</sup>liaments begin without the Kings presence in person, or by a Guardian of *England* by patent under the Kings Great Seal, the King being *in remotis*, or by commission under the Great Seal to certain Lords representing the Kings person, and it hath been thus in all ages unto this Session of Parliament, wherein His Majesty hath been pressed, and hath passed two Acts of Parliament, one for a Triennial Parliament, and another for a perpetuall, if the Houses please to satisfie their desires; how these two Acts agree one with another, and with the Statute in *Ed.* the thirds <sup>4 E.3 c.14.</sup> time, where Parliaments are ordained <sup>36 E.3.c.</sup> to be holden every year, and what <sup>10.21 Jac.</sup> mischeifs to the people of this Land <sup>the Act of</sup> such length of Parliaments will pro- <sup>limitation</sup> duce by protections and priviledges <sup>of Actions,</sup> to free them and their meniall servants from all debts during their lives, if they please to continue so long, and how destructive to mens actions against them, by reason of the Statute of Limitations, which confines

their actions to certain years, and many other inconveniences of greater importance, is easie to understand.

4 pars. Inst.  
p. 14.  
Vow and  
Covenant.  
p. 11.

How can any man affirm that the two Houses of Parliament do act now by the Kings Writ, which relates to Councell and Treaty with the King, concerning the King, the defence of his Kingdom and of the Church of *England*, these are three points which it tends to, as appears by the Writ. They keep their King prisoner at *Holmby*, and will not suffer him to consult and treat with them.

They have made a Vow and a *Covenant* to assist the forces raised and continued by both houses against the forces raised by the King without their consent, and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the *Kings* Kingdom, or their kingdom?

1 pars,  
Cook Dean  
and Chap  
ter of  
Norwich.

When by their Solemn League and covenant they extirpate Bishops, Deans and Chapters root and branch, is this to defend the Church of *England*? (that Church must necessarily be

be meant, that was the Church of *Eng-land* when the said Writ bore test) they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controul other Courts of Justice, or prevent them from sitting, or enacting, and therefore not the two Houses, &c.* It is true, the King

cannot controul or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men according to the fixed Laws. The Houses make no Court without the King, they are no body corporate without the King, nor Parliament without the King, they all make one corporate body, one Court called the Parliament, whereof the King is the head, and the Court is in the Lords House, where the King is present: and as man is no man without a head, so the Houses severed from the King, as now they are,

14 H. 8.2.  
36 Hen. 8.  
Dyer. 60.  
4 Pars Inst.  
p. 1.

have no power at all, and they themselves by levying War against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroging this Parliament of no effect, by the said Acts of their own: they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby He may discern what Bills are fit to pass, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

17 H. 8. c. 24. 28 H. 8. 11. Dier. 2 R. 3. 11. For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings Patent or Writ, otherwise they are no Judges: the houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges belongs to the King: the King cannot controul or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges but the Judges



Judges of the two Houses. In his other Courts, the King commits his power to his Judges by his Patent, and they are sworn to do common right to all men, and the King is sworn not to let them from so doing; the King cannot judge in those Courts, nor controul; but the King is both Judge and Controul in the Court of Parliament, *quoad* Acts, for his assent or dissent doth give life or death to all Bills. Many Lawyers have much to answer to God, this kingdom, and to posterity, for pulling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others, have published in these Troubles, which have been none of the least causes of the raising and continuing of them: And so I have done with the first part of this Answer.

A D. 2.

For the *Non sequitur*, in the second Section of the Gentl. Answer, the Antecedent and the Consequent are his own.

G 4

Quem

*libellus :*

*Quem recitas meus est (ô Fidentine!)  
Sed male dum recitas incipit esse tuus.*

27 H.8.c.  
24.

My words are, that the King is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King : My paper hath no such thing, as that the Kings power cannot be derived to others, or the virtue of his power : For his power, and the virtue of his power, is in all Patents to his Judges, in Charters to Corporations, in Commissions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long 'tis they obey him : but when they renounce that power, and claim it not from the King, and declare to the Kingdom, that he is not in condition to govern, and imprison him, and usurp to themselves all Royal authority, as the two Houses now do, no reasonable man can affirm, that they act by the power of their prisoner

ner, who hath no power to give them, that by force of armes take all power to themselves.

The Gent. saith *The King grants Commissions daily of Oyre and Terminer, which he cannot frustrate nor elude.* The King may revoke and discharge the commission by his Writ, as he may remove all Judges, and place other men in their room; and any Kings death determines all the Judges Patents at *Westminster-Hall*, Commission of Oyre and Terminer, &c.

And so he might dissolve both houses in all times by his Writ under the Great Seal, untill that in this Parliament, by his own concession, the King of his goodness hath secluded himself which goodness hath been full ill requited.

The Gentl. affirms, *That the power the Parliament hath is concurrent from the King and Kingdom;* which he conceives is proved by the grant of Subsidies to the King by the Parliament. The mistaking of this word (*Parliament*) hath been mischiveous in these times to this Land, and it is affectedly mistaken, which makes

4 E.4.34.

5.E.4.4.

1 Eliz.

Dyer.165.

1 Mar.

Brooks

case 447.

4 Pars In-  
stit.p.

the fin the greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it, when all men know that of the 120 Peers of the Kingdom, who were temporal Peers before the Troubles, there are now not above 30 in the Lords House, and in the House of Commons, about 200 of the principall Gentl. of the Kingdom left the House and adhered to his Majesty, whose imprisonment by them shews no such candor as is to be desired.

It is true, that no Tallage can be laid upon the people of this Land but by their consent in Parliament, as appeareth by the Laws mentioned in the Margent; but you shall find in *M. Seldens* learned Book, called *Mare Clausum*, a number of presidents in *Henry* the thirds time for Ship-mony

\* 25. E. 1. justly condemned this Parliament, to  
confirmatio the which his Majesty assented; and  
chartarum in truth that Ship money \* was con-  
chap. 6. demned before by the said 2 Statutes  
34 E. 1. c. 1. of 25 E. 1 & 34 E. 1. *de Tallagio non*  
*de Tallagio non conce-*  
*dendo.* *concedendo Dangelet, Englishery,* and  
many grievous burthens were laid  
upon

upon the people, and born untill that memorable Princes time. But I am of opinion, that the common Law of the Land did always restrain Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appear by *Magna Charta*, the last Chapter, where the Prelates, Lords, and Communalty, gave the King the fifteenth part of their moveables. In truth it is no manner of consequence, because the King cannot take what he pleaseth of the Subjects goods, that therefore they have a concurrent power in Parliament; there have been many Parliaments and no subsidies granted: Parliaments may be without Subsidies, but Subsidies cannot be without Parliaments: of ancient times Parliaments rarely granted any, unless in the time of forreign Wars; and in my time, *Qu. Elizabeth* refused a Subsidy granted in Parliament, and in the Parliament 1 *Jac.* none were granted. The Gent. should make a conscience of blinding the people with such untrue colours, to the ruin of the king and people.

A D.

A D. 3.

The Gentleman affirms, *That the sending Propositions to the King, and desiring his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right and property,* The Propositions sent to Newcastle, are in Print; wherein the two Houses are so far from Humbly Petitioning, that they stile not themselves His Majesties Subjects, as appears by the Propositions.

That they have a strict right or property to any one of these Propositions is a strange Assertion, every one of them being against the Laws now in force. Have the two Houses a strict right and property, to lay upon the People what Taxes they shall judge meet? to pardon all Treasons, &c. that is one of their Propositions. Have they a strict right and property to pardon themselves? And so for all the rest of their Propositions.

These

These Propositions have been Voted by both Houses, the Kings Assent (they being drawn into Bills) makes them Acts of Parliament: Hath the King no right to assent or disassent? Was the sending but a Complement? All our Law-Books and Statutes speak otherwise. This Gentleman, and others, must give an account one time or other for such Delusions put upon the People.

12 H.7.20.

1 Jac.c.1.

1 Car.c 7.

## A D. 4.

The Gentleman saith, *They affirm not, that the Kings Power is separated from His Person, so as the two Spencers affirmed, &c.* His Majesties person is now at *Holmby* under their Guards; have they not severed his power from him, when by no Power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend him for the Exercise of his Conscience?

For

15 Ed. 2.

Exilium

Hugonis

Calvin's

Case. 1 E.

c. 2. 7 pars,

Reports.

11.

For the three Conclusions of the *Spencers*, do not the two Houses act every of them? They say, his Majesty hath broken his Trust, touching the Government of his People: they have raised Armies to take him, they have taken him, and Imprisoned him; they govern themselves; they make Laws, Impose Taxes, make Judges, Sheriffs, and take upon them *omnia insignia summa potestatis*: Is not this to remove the King for Misdemeanors, to reform *per asperum*, to govern in aid of him; the three Conclusions of the *Spencers*? Do they think the good people of *England* are become stupid, and will not at length see these things?

The Gentleman saith, *They do not*

Plowd. 4.

Eli. 2. c. 3.

the Kings

power and

his person

are indivi-

sible.

*separate his Power from his Person, but distinguish it, &c.* His Power is in his Legal Writs, Courts, and Officers: When they Counterfeit the Great Seal, and Seal Writs with the same, make Judges themselves, Courts and Officers by their own Ordinances against his consent, declared under his true Great Seal of *England* (not by Word of Mouth,

Letters,



Letters, or Ministers only) their Seal is obeyed, their own Writs, their own Judges, their own Courts, their own Officers, and not the Kings: The time will come when such strange actions and discourses will be lamented.

## AD. 5.

The Gentleman goes on, *We take not from the King all power of pardoning Delinquents, we only say it is not proper to him quarto modo, &c.* What do you mean by *quarto modo*? I am sure, *Omnis Rex Angliae, solus Rex & semper Rex*, can do it, and none else. Read the Bookes of the Law to this purpose, collected by that reverend and Learned Judge *Stanford*, from all Antiquity to his *Stanford* time, who died in the last Year of *pleas 95.* King *Philip* and Queen *Maries* <sup>27.H.8.c.</sup> <sup>24.Dier.</sup> Reign, you shall find this a truth undeniable; and this power was never questioned in any Age in any Book by any until this time, that every thing is put to the question: You Gentle.

Gentlemen, who profess the Law, and maintain the party against the King, return at length, and bring not so much Scandal upon the Law, (which preserves all) by publishing such incredible things.

*Braff.* lib. 3.  
cap. 14. fol.  
132. 1 pars  
instit p.  
344.  
Plow. 3.  
*Eliz.* 236,  
237.

We hold only what the Law holds: The Kings Prerogative and the Subjects Liberty are determined, and bounded, and admeasured by the Written Law what they are; we do not hold the King to have any more power, neither doth his Majesty claim any other but what the Law gives him; the two Houses by the Law of this Land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting: (and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) do now understand that to be Law, and do now evidently see, and assuredly know, that it is not an Ordinance of the two Houses, but an Act of Parliament, made by the King, Lords, and Commons that will secure them, and let this Army remember their Executed Fellow-Souldiers,) and the Law was  
always

always so taken by all Men until these troubles; that have begot Monsters of Opinions.

## A D. 6.

This Gentleman says, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your distinctions, I and you profess the Law; shew me Law for your Distinctions, or Letter, Syllable, or Line, in any Age in the Books of the Law, that the King may in one time be in no condition to Govern, and yet have the habit of Governing, and another time he may (*viz.*) when the two Houses will suffer him: The Law saith thus, *Ubi lex non distinguit, non est distinguendum.*

He says, *the King is not barred from returning to his Parliament*, (as he calls the two Houses) he knows the contrary, the whole City knows the contrary, *Nos juris consulti sumus Sacerdotes*, (as *Justinian* the Emperour hath it, in the first Book of his

his *Institutions*) and therefore knowledge and truth should come from our lips: Worthy and Ingenious Men will remember, and reflect upon that passage of that good and wise Man *Seneca*, *Non qua itur, sed qua eundum*; follow not the ways of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

## A D. 7.

1 Eliz, cha.  
1. Caw-  
dries Cafe  
5 pars. fol.  
1.

The Gentleman says, *We Swear that the King is our Supream Governour over all persons and in all causes, &c.* Why hath he left out the Word (*only?*) for the Oath the Members now take, is that King *Charles* is now the only and Supream Governour in all Causes, over all Persons, and yet they keep their only Supream Governour now in prison, and Act now in Parliament by Virtue of their Prisoners Writ, and by a concurrent power in this Parliament, and by their own

own strict Right and Property,  
 (as the Gentleman affirms in his Answer) These things agree well with their Oath, that the King is the only Supream Governour in all Causes over all Persons: This Oath is taken now in the Parliament time by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments, otherwise they have no Power, nor colour to meddle with the Publick Affairs.

This Oath  
 is allowed  
 by the  
 Common  
 Law of the  
 Land.

This Oath being taken in Parliament, that *the King is the only and Supream Governour in all Causes*, then it follows in Parliament Causes; *over all Persons*, then over the two Houses; Let them keep this Oath, and we shall be sure of Peace in the Land: And good Lawyers ought to desire Peace both for the publick good, and their private, and not dishonour that Noble Profession, as many do in this miserable time.

The Gentleman says, *We do not Swear that the King is above all Law, nor above the safety of his People;*

*People* ; neither do we so swear, but his Majesty and we will Swear to the contrary, and have sworn, and have made good, and will by Gods Grace make good our Oath to the World, that the *King* is not above the Law, nor above the safety of his People. The Law, and the safety of his People, are his Safety, his Honour, and his Strength.

AD. 8.

The Gentleman concludes, *That Acts of Parliament are not formally binding, nor compleat without the Kings Assent, yet the Houses have a Virtual Power without the Kings particular assent, to do things in order to publick justice and safety. (viz.)* In setting up the Excise, in raising and maintaining of Armies, in Taxing the People at pleasure with Fifth and Twentieth parts, Fifty Subsidies, Sequestrations, Loans, Compositions, Imprisoning the King, Abolishing the Common-Prayer-Book, selling the Church Lands, &c. All these are in order to the publick Justice and Safety.

Mr.

Mr. *H. P.* you are of my Profession, I beseech you, for the good of your Countrey, for the Honour of our Science, perswade your self, and others as much as in you lies, to believe and follow the Monition and Councel of that Memorable, Reverend, and Profoundly Learned in the Laws and Customes of the Land, the Lord *Cooke*, who Writes as becomes a Great and Learned Judge of the Law ( a Person much magnified by the two Houses ) in these Words: *Peruse over all Books, Records, and Histories, and you shall find a Principle in Law, a Rule in Reason, and a Tryal in Experience, that Treason doth ever produce Fatal and Final Destruction to the Offender, and never attains to the desired end (two Incidents inseparable thereunto) and therefore let all Men abandon it, as the poysonous Bait of the Devil, and follow the precept in Holy Scripture, Serve God, Honour the King, and have no Company with the Seditious.*

3 part, Inst.  
p. 36.

Con-

## Conclusion.

*I say again, that without an Act of Oblivion, a Gracious General Pardon from His Majesty, the Arrears of the Soldiers paid, a favourable regard had to tender Consciences, there will be neither Truth nor Peace in this Land, nor any Man secure of any thing he hath.*

*By me*

*David Jenkins,*

*Prisoner in the Tower.*

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A  
DISCOURSE  
TOUCHING

*The Inconveniencies of a Long-continued*

PARLIAMENT.

**A** Perpetual Parliament is repugnant to the Act made this Parliament for a Trienniall Parliament; for how can every three years a Parliament begin, if this be perpetual, which may be so if the two Houses please.

A 2. An adjournment of the Parliament makes no Session, 4 *pars. instit* fol. 27. Howbeit, before the adjournment,

ment, the KING gives His Royal assent to some Bills. *Cook, ibid.*

3. There is no Session till a Prorogation or dissolution of the Parliament.

*Plow.com.  
2.H.3.8.  
Bro relati-  
on 35.Bro.  
Par.86.  
Dier.1Ma-  
ria 58.*

4. This Parliament, as appears by the Act for not dissolving thereof, set down in the Printed statutes of this Parliament, *fol. 138.* cannot be prorogued or dissolved, but by Act of parliament. There hath been as yet no Act of Parliament in that behalf: and therefore all the Acts of this Parliament are Acts of one Session.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day: so the Act for this Triennial, and the Act for this Perpetual, are two Acts of one day by the law.

6. *Ed. 3. cap. 8. & 36 Ed. 3. cap. 10.*

A Parliament is to be holden once every year, and more often if need shall be; those Acts are confirmed by the Act for the Triennial Parliament. How doth a Perpetual Parliament agree with a Parliament once every year, or with the intention of those Lawes? how doth a Parliament every

ment every three years agree with a Parliament for ever, which may be if the two Houses please?

7. The result is this at one day in Law this Parliament two Acts have passed (for howbeit the one was in 16. *Carol.* and the other in 17 *Carol.* yet both in Law are Acts of one day) the one saith there shall be a Trienni all Parliament after the end of the setting of this Parliament: The other this Parliament shall set forever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

When an Act of Parliament is against common Right or Reason, or repugnant, or impossible to be performed, the common Law shall controul it, and adjudg this Act to be void; they are the words of the Law.

An Act of Parliament, that a man shall be Judge in his own cause, is a void Act, *Hobbart.* fol. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any member of the House of Commons doe any Subject

H

wrong,

1 Pars  
Doct Bon-  
hams case  
fol. 118  
8.E. 3. 3. 30  
33.E. cessa-  
vit. 32. 27.  
H.G. Annu-  
ity 48. 1 E-  
liz Dier,  
313.

wrong by disseising him of his Land, dispossessing him of his goods, blasting his fame, or doing violence to his person, that such persons during their lives should not be questioned by a privilege of Parliament, and that extended also to many other beside themselves, Common Right doth abhor these Enormities, which a perpetual Parliament doth beget, besides the utter destruction of all mens actions, real, personall or mixt, who have to do with Parliament-men, by the Statute of Limitation, which confines Suites to certain years.

21. Jac. c.  
16.

For Common Reason, Parliaments were ordained for Remedies to redress publique grievances; It is against Reason they should make publick and insufferable Grievances. The Law of the Land allows no protection for any man imployed in the service of the Kingdom but for a  
39 H. 6. 39. year, to be free from Suits, and in many Suites none at all, howbeit he be in such service; but a Parliament perpetual may prove a protection, not for a year, but for ever, which is against all manner of Reason.

For

For Impossibility, The death of his Majesty (whose life God prolong) dissolves it necessarily; the Writ of Summons is, *Carolus Rex in hoc individio*, and *Carolus Rex* is in this particular *habiturus colloquium & tractatum cum prelati & proceribus*, &c. King Charles being to have Conference and Treaty with his Prelates and Peeres; *Carolus Rex* cannot have *colloquium & tractatum*, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

2. H. 5.  
Cook. title  
parl. 3. par.

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17 *Caroli Regis* which is to continue at pleasure, is in the said Act expressed to be to raise credit for Money for these three purposes; First, for relief of his Majesties Army and people in the North. Secondly, for preventing the imminent danger of the Kingdom. Thirdly, for supply of other his Majesties present

Sir Antho:  
Manescafe  
5.pars.1.H  
4.6.Littl.  
cap.Villcu.

and urgent occasions. These ends are ended, the relief of that army, the imminent danger supposed was six years ago, the supply of his Majesty hath been a supply against Him; take away the end, the means thereto are to no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end; the Law rejects things unprofitable and useles.

A perpetual Parliament (besides that it incites men to self-ends, destructive of the publick of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Borough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament men, which to many counties will amount above some Subsidies yearly: there are many poor Borough Towns in each County of this Kingdom, who being to maintain two Burgeses in Parliament, will be quickly beggered, if the Parliam-

ment

ment have no end, for all which reasons it is clear, that such long continuance of Parliaments, will in stead of a Remedy ( which is and ought to be the proper and true ends of Parliaments ) become an insufferable Grievance and Oppression to all the people of the Land.

The Writ of Summons this Parliament is the *Basis* and Foundation of the Parliament. If the Foundation be destroyed, the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium & tractatum cum Prelatis, magnatibus & proceribus super arduis negotiis, concernentibus*, 1. *Nos.* 2. *Defensionem regni nostri.* 3. *Defensionem Ecclesie Anglicane.* This Parliament hath overthrown this Foundation in all three part. 1. *Nos.* The King they have chased away, and imprisoned him; they have voted no Prelats, and that a number of other Lords, about fourty in the City, must not come to the House, and about forty more are out of Town, the *colloquium & tractatus* are made void thereby. For the King cannot consult and tre t

there with men removed from thence. 2. *Defensionem regni Nostri*, that is gone; they have made it their Kingdom, not His, for they have usurped all his Sovereignty. 3. *Defensionem Ecclesie Anglicana*, that is gone, that *Ecclesia Anglicana*, must be understood necessarily that Church, that at the test of the writ was *Ecclesia Anglicana*; they have destroyed that too. So now these men would be called a Parliament, having abated, quashed, and made nothing of the Writ whereby they were summoned and assembled. If the writ be made void, all the Process is void also: that House must needs fall where the Foundation is overthrown, *Sublato fundamento opus cadit*, the foundation being taken away the work falls, is both a *Maxime* in Law and Reason.

For some years past, there is no crime from Treason to trespass, but they are guilty of: all Treasons, Felonies, Robbers, Trespasses are *contra pacem coronam & dignitatem Regis*, against the Peace, Crown and dignity of the King; as appears  
by



by all indictments in all ages. *Pax Regis* the Kings peace, *Corona Regis* the Kings Crown, *Dignitas Regis* the Kings Dignity, are all trod under foot, and made nothing; *Pax Regis*, the peace of the King is become a warr against the King, his Dignity put into prison, and the Crown put upon their own heads.

All the Judges of *England* have resolved, that Noblemen committing Treason have forfeited their office and dignity; *Their office is to counsel the King in time of peace, to defend him in time of War*, and therefore those men against the duty and end of their Dignity taking not only Counsel, but Armes also to destroy Him, and being thereof attaint by due courie of Law, by a tacite condition annexed to the estate of their Dignity, have forfeited the same; they are the words of the Law, and therefore they have made themselves incapable to be members of the Upper House.

Nevils  
Case 7.  
part. 34.  
2. Jac.

*The Oppressions of the People.*

Briberies, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords. What have they done ?

The house of Commons cannot by the law commit any man to prison, who is not of the said house, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique peace, by the priviledg of the whole body.

They have not power by the writ, which the King issueth to elect and return Members of that house, so to do. For the writ for them is only *ad faciendum & consentiendum*, to those things, whereof his Majesty shall consult and treat with his prelates and nobles, & *de communi consilio regni* shall be their ordained, as appears by the Writ. There is no separate power given over the Kings people to them but only *ad faciendum ad consentiendum*, and in all times this hath been expounded and restrained

2 pars Inst.  
3, 24, 25.

to

to that which concerned their own members in relation to the publique Service, as they are members of the corporate body of the Parliament, whereof the King is the head.

But that the House of Commons have committed any man for Treason Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and reason, so no instance can be given till this Parliament.

All Questions and Tryals where witnesses are examined, the Examination is upon Oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath, is but a loose discourse; therefore the House of Commons not claiming power to give oath, have no power to examine any man.

No man shall be imprisoned by the King or his Councell unless it be by Indictment, presentment of his good and lawfull Neighbors where such deeds be done, in due manner, or by process made by writ original at the common Law: This statute rehear-

9 H.6.41

22.E.3.22.

5 H.c.8.

3 H.6.46.

25 F.3c4.

Petition.of  
Right.

3 Car.

ses *Magna Charta*, p. 29. and expounds *Lex Terra*, the Law of the Land, there mentioned: this Law bindes all men, and the House of Commons (for they say, they are of the Kings Councell) in all points, but only against the disturbers of the service of the Parliament; and therefore the Imprisonment of several persons who are not their Members, and for no disturbance to their Members, is utterly against the Law of the Land, and the Franchise of the Freemen of this Realm.

*Cui non licet quod minus, non licet quod majus*; he who may not do what is less may not do what is greater, they cannot commit a man for Murder or Felony, much less for Treason.

8 Pars,  
Cook. 120.  
27 H. 6. 8.

No Court can fine and imprison, but a Court of Record: the House of Commons is no Court of Record, the House of Lords where the King is in person, his nobles and his Judges, and Councell at Law, the Masters of the chancery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & tractatus*

*tractatus* is. The House of Commons may present Grievances, grant or not grant Aids, consent or not consent to new Laws, but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no journal book, but sithence *Edw. 6* time. *6 Hen 8. cap. 15* doth not prove the House of Commons to bee a Court of Record, it mentions only to be entred on record in the Book of the Clerk of the Parliament if any Member depart into the Country. There is no Journall but sithence *Edw. 6*. time, and that is a Remembrance or Memoriall, *12. H. 4. 23.*

The whole Parliament is one corporate body, consisting of the Head and three Estates: the Court is only there where the *Consilium & tractatus* is, where the consult and treaty is with the king, which is in the House of Lords only.

The house of Commons claim not to examine upon Oath any Man; no Court can be without a power to give an Oath, Courts Barron, Court of Pipowders, County-Court may and

*21 E. 4. f. 46.*  
Commons  
in Parlia-  
ment ne-  
font Jud.

*14. H. 8. 3.*  
*36. H. 8.*  
*Dier. 60.*  
*4 pars inst.*  
*cap. 1.*

and do give Oath. No Court can be without a power to try, no tryal can be without Oath; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to tryal, and consequently can be no Court.

The behavior of the Commons at a Conference with the Lords; the Commons are always uncovered, and standing, when the Lords sit with their hats on, which shews they are not Colleagues in judgment: for fellow Judges owe no such reverence to their Companions.

11. H. 4. c.  
11.

When was ever Fine imposed by the House of Commons estreated in the Exchequer? The ejecting of a Member who hath sitten is against the Law: for they cannot remove a man out of the House unduly returned, much less a man returned duly.

3. H. 4. l.  
1. H. 5. c. 1.  
2. H. 6. c. 7.  
23. H. 1.  
c. 15.

By these laws it appears, that if any undue return be made, the person returned is to continue a Member, the Sheriffes punishment is 200 l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise, and

and that person who is unduly returned, shall serve at his own charge, and have no benefit at the end of the the Parliament by the Writ *De solutione scædorum Militum, Civium & Burgensium Parliament*. And the rryal of the falsity of the return, is to be before the Justices of the Assizes in the proper County, or by Action of Debt in any Court of Record. This condemns the Committee for undue Elections, which hath been practised but of late times; but besides these Lawes, it is against a Maxime in the Common Law, an Averment is not receivable against the return of the Sheriff, for his Return is upon Oath, which Oath is to be credited in that Suit wherein the Return is made.

The said Statutes condemn and make those members no Members, which where not resiant in the Counties and Boroughs, for which they were elected, at the time of the test of the Writ of the Summons of the Parliament, and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

*Assault*

*Assault upon Parliament men.*

5H.4.c.6.  
11.H.6.c.  
11.

If a Parliament man, or his Meniall servant be assaulted, beaten, or wounded, in the Parliament time, Proclamation shall be made where the deed is done, that the Offender shall render himself to the Kings Bench, within a quarter of a year after Proclamation made, and the Offence there to be tried, for Default of Appearance the Offender is declared attainted of the Misdemeanor, and it is accorded that there after it be done likewise in the like case.

Bogo de  
Clare 18.E  
3.4.pars  
inst fol.24.  
10 Thornf-  
byes case.  
Clerk of  
the Parl.  
ibid.10.  
ibid.10.  
E.3.

Serving of process upon a Lord of the Parliament, punished in the Lords House.

Serving of process upon *Thornsbey*, inquired of in the *Chancery*, and there the Offenders were convicted,

The premises prove, that breaches of priviledg of Parliament may be punished elsewhere than in Parliament.

Upon



Upon all this discourse, it is easie to discern what fruits may be expected from this Parliament, continuing as long as the two Houses please; and that there is no safety for this common wealth, but by the Observations of their ancient Franchises, customs and Lawes.

### Conclusion.

**I** Say again, that without an Act of Oblivion, a gracious general Pardon from His Majesty, the Arrears of the Souldiers paid, a favourable regard had to tender Consciences, there will be neither Truth nor Peace in this Land, nor any man secure of anything hee hath.

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AN

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A N  
 APOLOGY  
 FOR THE  
 ARMY

*Touching the Eight Queries.*

Bracton.  
 fol. 118.  
 Stamford,  
 fol. 2.

**T**Hose Treasonable and Insolent  
*Queries* make the Army the  
 Houses Subjects, and not the Kings :  
*None by the Laws of this Land can in  
 this Kingdom have an Army but his  
 Majesty.*

It

It appears, the Army doth now evidently perceive, that they were misled by the Specious Pretences of *Salus populi*, the maintenance of the Kings Honour, and of the maintenance of the Laws of the Land, and Liberties of the Subject, to take up Arms against their Natural Liege Lord and Sovereign the King: The People is the Body, the King is the Head; was the Body safe when the Head was Distressed and Imprisoned? For Laws and Liberties, have not the prevailing Party in the two Houses destroyed above an hundred Acts of Parliament, and in effect, *Magna* Mag.Char. *Charta*, & *Charta de Forreſta*, which c. 1. & ult. are the common Laws of the Land? All the Act Doth Excise, the Fifth, and Twen- concern- tieth parts, Meal-Money, and ma- King, ny more Burdens which this Land Church never heard of before, maintain the and Church Liberties of the People? You and Men. 25. E. that Party of the two Houses, made 1 cap. 1. the Army by several Declarations before Engagement believe, that you would preserve the Kings Honour and Greatness, the Laws and Liberties of the People: The Army and the

the whole Kingdom now *facta vident*, see your Actions, and have no reason longer to believe your Oaths, Vows, and Declarations; and since that Party in the two Houses refuse to perform any thing according to their said Oaths, Vows, and Declarations, the Army and the Kingdom may and ought, both by your own Principles, and the Laws of the Land, to pursue the ends for which they were raised. And so your first *Quere* is Resolved; whereby it is manifest, that Specious Pretences to carry on Ambitious and Pernicious Designs, fix not upon the Army, but upon you, and the prevailing Party in both Houses.

*The Solution of the second Quere.*

3 par. Inst. The Army, to their Eternal Honour, have freed the King from Imprisonment at *Holmby*. It was High-Treason to Imprison His Majesty: To free his Majesty from that Imprisonment was to deliver him out of Traiterous hands, which was the Armies bound-

f. 12. 39

Eli. 1 Jac.

ibid. 3. &

3. E. 6. c. 2.

11 H. 7. c. 1.

bounden Duty, by the Law of God and the Land. That Party refused to suffer his Majesty to have two of his Chaplains for the Exercise of his Conscience, who had not taken the Covenant; free access was not permitted; doth the Army use his Majesty so? All Men see that Access to him is free, and such Chaplains as his Majesty desired are now attending on his Grace: Who are the Guilty Persons? The Army, who in this Action of delivering the King, act according to Law, or the said party who acted Treasonably against the Law? Who doth observe the Protestation better, they who Imprison their King, or they who free him from Prison?

That this Army was raised by the Parliament, is utterly false: the Army was raised by the two Houses upon the Specious Pretences of the Kings Honour, common safety, and the preservation of Laws and Liberties; which how made good, hath been shewed before, and all the People of the Kingdom do find by woful experience.

The

14.H.8.3. The two Houses are no more a  
 36.H.7.Di. Parliament, than a Body without a  
 60. 4 Head a Man. The two Houses can  
 pars Instit. make no Court without the King;  
 p.1.3.12. they are no Body Corporate without  
 14.16.R.2. the King; they all, Head and Mem-  
 c.1.5.Eliz. bers, make one Corporate Body.  
 c.2.17Ca- And this is so clear a Truth, that in  
 rol. The this Parliament by the Act of 17  
 Act for *Caroli* it is declared: That the Par-  
 the conti- liament shall not be Dissolved or  
 nuance of this Parli- Prorogued but by Act of Parliament:  
 ament. But the two Houses may respective-  
 ly Adjourn themselves. Two Hou-  
 ses and a Parliament are several  
 things, *Cuncta fidem vera faciunt*:  
 All Circumstances agree to prove  
 this truth. Before the *Norman* Con-  
 quest, and since to this Day, the  
 King is holden *Principium, Caput &*  
 4.par. Inst. *Finis*, that is the beginning, Head,  
 p. 18. and chief end of the Parliament, as  
 4 par. Inst. appeareth by the Treatise of the  
 p. 4. 9. manner of holding of Parliaments  
 5.Eliz.c.1. made before the *Norman* Conquest;  
 2. by the Writ of Summons of Parlia-  
 ment whereby the Treaty and *Parler*  
 in Parliament is to be had with the  
 King only; by the Common Law,  
 by

by the Statute Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appear, that without the *King* there can be no colour of a Parliament.

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay, is not the constant course of Parliaments violated, and made nothing thereby? They are guarded by Armed Men, divide the publick Mony among themselves, and that party endeavours to bring in a Foreign Power to Invade this Land again. If they be no Parliament, as clearly they are none without his Majesty, they have no priviledges, but do exercise an Arbitrary, Tyrannical and Treasonable Power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawful for every Subject, who suspects the Offender, to Apprehend him, and to secure him so that Justice may be done upon him according to the Law.

7 E.4.20.

8 E.4.3.

9 E.4.27.

4 H.7.18.

27 H.8.23.

You

You say the disobedience of the Army is a sad publick president, like to conjure up a spirit of Universal Disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the Houses are guilty, who conjured up the Spirit of Universal Disobedience against his Majesty, your and our only Supream Governour, but you, and that party in the two Houses, and even then when the House of Commons were taking and did take the said Oath of Supremacy; For the Covenant you mention, it is an Oath against the Laws of the Land, against the Petition of Right, divided in *Scotland*, wherein the first Article is to maintain the Reformed Religion in the Church of

2 par. Coll. *Scotland*: And certainly there is no  
 11. Ord. p. Subject of the *English* Nation doth  
 813. 3. par. know what the *Scottish* Religion is, I  
 Inst. fol. 65. believe the Army took not the Cove-  
 Petition of nant. No Man by the Law can  
 Right, 3 give an Oath in a new case without  
 Car. a par. an Act of Parliament; and therefore  
 instit. 119. the Imposers thereof are very blame-  
 able,



able, and guilty of the highest Crime

The Writer of these *Queres* seems to profess the Laws; let him declare what Act of Parliament doth justify the tending, giving, or taking of the said Oath: He knoweth there is none, he knoweth that all the parts of it are destructive to the Laws and Government to maintain which the Law of Nature, and the Law of the Land had obliged them. The Oath of the Covenant makes the Houses Supream Governours in Causes Ecclesiastical; the Oath of Supremacy makes the King so: And yet both taken by the same Persons, at the same time. What credit is to be given to persons who make nothing of Oaths, and contradict themselves? How does the Covenant and the Oath of Supremacy agree? How do their Protestation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be merciful to this Land for these Oaths.

It is a sad thing to consider that so many Gentlemen who profess the Laws,

Mag. Char.  
cap. 1. & ul-  
timo Arti-  
culi cleri,  
and many  
other Sta-  
tutes. 16.  
E. 4 10.

Laws, and so many worthy Men in both Houses should be so transported as they are, knowing that the Laws of the Land from time to time and in all times, are contrary to all their Actions, and that they yet should amuse themselves and the people with the Word Parliament, without the King, and with the Covenant; whereas they know they are no Parliament without his Majesty: And that *English* Men throughout the Kingdom should Swear a Covenant to preserve the Reformed Religion of *Scotland*, in Doctrine, Worship, Discipline, and Government, which they do no more know than the Doctrine, Worship, Discipline and Government of *Prestor Jehn* in *Ethiopia*; if they consider it, they cannot but discern that this is a high desperate and impious madness.

Be wise in time: Without the King and the Laws, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your Posterities; apply your selves to be  
capable

capable of any Act of Oblivion, and of a general Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable Liberty for Mens Consciences; and God will bleſs your endeavours: And the People (to whom you are now very hateful) will have you in better Eſtimation.

*The third Quere is thus Answered.*

You reſemble the Army to *Jack Cade* and his Complices, and you cite the Act of Parliament of 31 *Hen. 6. cap. 1.* And that it may appear who acts the part of *Jack Cade*, you and that party in the two Houſes, or the Army, I think it neceſſary to ſet down the ſaid Act in Words at length as followeth.

First, ~~whereas~~ *whereas* the moſt abominable Tyrant, Horrible, Odious, and Arrant falſe Traytor John Cade, calling and naming himſelf ſometime *Mortimer*, ſometime Captain of *Kent*, which Name, Fame, Acts and Feats are to be removed out of the Speech and Minds of every faithful Chriſtian

I

Man,

Man perpetually, *Falsly and Trayte-  
rously* purposing, and imagining the per-  
petual Destruction of the Kings said  
Person, and final Subversion of this  
Realm, taking upon him Royal Power,  
and gathering to him the Kings people  
in great Numbers, by false subtil ima-  
gined Language, and seditiously making  
a stirring Rebellion and Insurrection,  
under colour of Justice, for Reforma-  
tion of the Laws of the said King,  
Robbing, Stealing, and Spoyling great  
part of his faithful People. Our said  
Soveraign Lord the King consider-  
ing the Premises, with many other  
which were more odious to remem-  
ber, *by the advice and consent of the  
Lords aforesaid and at the request of  
the said Commons,* and by Authority  
aforesaid, hath Ordained and Esta-  
blished that the said *John Cade*, shall  
be reputed, had, named, and declared  
a false Traytor to our Soveraign Lord  
the King; and that all his Tyranny,  
Acts, Feats, and false Opinions  
shall be Voided, Abated, Nulled,  
Destroyed, and put out of Remem-  
brance for ever: And that all Indict-  
ments, and all things depending  
thereof,

thereof, had and made under the Power of Tyranny, shall be likewise void, Annulled, Abated, Repealed, and holden for none: And that the Blood of none of them be thereof Defiled nor Corrupted, but by the Authority of the said Parliament clearly declared for ever: And that all Indictments in times coming, in like case, under Power of Tyranny, Rebellion, and stirring, had, shall be of no Record nor effect, but void in Law; *and all the Petitions delivered to the said King in his last Parliament holden at Westminster, Novemb. 6. in the 29 of his Reign, against his mind, by him not agreed, shall be taken and put in Oblivion, out of remembrance, Undone, Voided, Annulled, and Destroyed for ever, as a thing purposed against God and Conscience, and against his Royal Estate and Pre-eminence, and also dishonorable and unreasonable.*

Now we are to examine who hath trod in the Steps of *Jack Cade*. You and the present prevailing Party of the two Houses, took upon them, and do take all the Royal Power in all

*things so did Jack Cade, as appears by the said Act; the Army do not so: They who imprison the King purpose to destroy his person (our imprisoned Kings alwayes \* fared so) Jack Cade did likewise so purpose: The said party in the two Houses made a stirring under colour of justice for reformation of the Lawes, so did Jack Cade: The Army do not so, but desire that the Lawes should be observed: Jack Cade levied Warr against the King: The Army preserves him. Jack Cade dyed a Declared Traytor to his Sovereign Lord the King, this Army might have lived to have the glorious true Honour of being Restorers of their King.*

*Simon Sudbury Archbishop of Canterbury was murther'd by Jack Straw, William Land Archbishop of Canterbury was likewise murthered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many misled by Jack Straw perceiving his trayterous purposes fell from him*

25 Ed. 3. 4.  
28 Ed. 3. 3.  
Petition of  
Right.

him: and as that was lawfull, just, and honourable, so it is for this Army to adhere to their natural King, and so endeavor to settle the Kingdom again in the just Lawes and Liberties thereof: *London* did then right worthily adhere to the King and the Laws, and not to *Jack Straw* and his specious pretences, and it is hoped they will do so now. By this it appears, that the Gentlemans Discourse touching *Jack Cade*, fastens altogether on his party; and cleareth the Army.

*To the IV. which is resolved thus.*

The Arrears of the Army (howbeit it is the least thing they look after) yet it being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: A person who serves in any kind, and is not paid his wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reform all things when the Army doth disband: Who will believe it? Will any believe that the settling of the Presbyte-

Fitz. N. B

159.

9.E.4.20.

38.H.6.27.

23.Eliz,

ty Dier.369.

ry will do it? Will any believe that his Majesty will pass the Propositions sent to Him to *Newcastle*? Will any man beleive that this Kingdom will ever be quiet, without his Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing without a pardon from his Majesty? have they not seen some of their fellowes hanged before their eyes, for actions done as Souldiers? shall the Kingdom have no account of the many Millions received of the publique Money? Will the Members of the Houses accuse themselves? Shall private and publique Debts be never paid? Shall the Kingdom lie ever on burthens of Oppression and Tyranny? There is no visible way to remedy all these Enormities, but the power of the Army.

*To the V. which is solved thus.*

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been



been just, faithful and honourable, they have kept their words: The party of the Houses have been constant to nothing, but in dividing the publique Treasure among themselves, and laying Burthens upon the people: and in breaking all the Oathes, Vowes, and promises they ever made: As the Army hath power so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Arms are just, and blessed; and the King is bound in justice to reward his Deliverers with honour, profit and meet Liberty of Conscience.

2 & 3 E.6.  
c.2.  
11 H.7.c.1.  
Calvins  
case. 7 pars  
Cook. f.11

*To the VI. Quere.*

All the sixth *Quere* contains calumnies cast upon the Army; the new Elections are against all the Lawes mentioned in the Margin, and are against the Ejection of the old Members; and by this it may be judged, what a House of Commons we have. By the said Lawes it appears, that if any undue Return be made, the person returned is to

11.H.4 c.1  
1.H.5.c.1.  
8.H.6 c.7.  
23.H.6.c.  
15.

continue a Member, the Sheriff's Punishment is two Hundred Pounds, one to the King, and the other to the Party that is duly elected, Imprisonment for a Year without Bail or Mainprise; and that Person who is unduly returned shall serve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De Solutione Militum, Civium, & Burgensium Parliament*. And the Tryal of the falsity of the Return, is to be before the Justices of Assize in the proper County, or by Action of Debt in any Court of Record. This Condemns the Committee for undue Elections, which hath been practised but of late times: For besides these Laws, it is a *Maxim* of the Common-Law, an Averment is not receivable against the Return of the Sheriff, for his Return is upon Oath, which Oath is to be credited in that Suit wherein the Return is made.

The said Statutes condemn Elections of such Men who were not resident and dwelt in the County or Boroughs for which they were returned;

3.E.4.20.

5.Ed.4.42.

ed; and any abusive Practise of late times to the contrary is against the Law, and ought not to be allowed.

*To the VII. Quere.*

The *Querist* saith, that the Votes of the Independents in the Houses were Arbitrary, Exorbitant, and Irregular, and that they disposed and singred more of the common Treasure than others. That whole *Quere* I believe is False and Slandrous; and the Author ought to make it good, or else to undergo the Law of *Talion*; which is to suffer such Punishment, failing of his proof, <sup>37.E.5 c.</sup> as the Accused should in case of Proof made.

*To the VIII. Quere.*

This *Quere* is all minatory and threatning, and the contrary of every part is true: By the deliverance of the King and Kingdom, from the Bondage of that Party in the two Houses, by the Army, their Renown

will be everlasting; they secure themselves, they content and please the Kingdom, City and Countrey, as appears by their confluence to see his Majesty and the Army, and their Acclamations for his Majesties Safety and Restitution; all which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the People of this Land, who have been so long intrallled.

*Sir Thomas Fairfax*, let your Worthiness remember your Extraction and your Ladies, by the Grace and Favour of the Prince, to be in the Rank of Nobility. Remember what Honour and Glory the present Age and all Posterity will justly give to the Restorer of the King to his Throne, of the Laws to their strength, and of the Afflicted People of this Land to Peace: Let the Collonels and Commanders under you, and likewise your Souldiery, rest assured, that they shall not only share in the Renown of this Action, but also shall have such Remuneration as their Haughty Courage and so high a Virtue doth deserve. This his Majesty  
can

can and will do, the Houses neither will nor can : and God Bless you all and prosper you.

### Conclusion.

**I** Conclude all, as I have always done :  
*Without an Act of Oblivion, a general Pardon, the Arrears of the Souldiery paid, and a regard to Liberty of Conscience, this Kingdom will certainly be ruined.*

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Judge

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1875

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Judge J E N K I N S ' S  
**PLEA**

D E L I V E R E D

In to the Earl of *Manchester*, and  
the Speaker of the House of COM-  
MONS,

Sitting in the CHANCERY at  
**WESTMINSTER,**

Which was read by their Command in  
open Court, the 14th. of *Febr.* 1647.

And there Avowed  
By **DAVID JENKINS** *Priso-*  
*ner in NEW GATE.*

---

L O N D O N,  
Printed in the Year 1647. And  
Reprinted in the Year 1681.

1861

1862

1863

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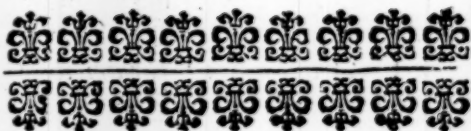
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1871

1872





Judge J E N K I N S ' S .

# PLEA

Delivered into the Earl of  
*Manchester*, and the Speaker  
of the House of  
*Commons*, Sitting in the  
*Chancery at Westminster.*

**I** Have been required to appear in  
the Chancery the twelfth of this  
Instant *February*, before Commissioners  
appointed by the two Houses  
for the keeping of their Great Seal,  
and managing the Affairs of the  
Chancery.

I cannot, nor ought, nor will submit to this Power; I am a Judge Sworn to the Laws. The Law is  
 4 pars inst. First, that this Court is *Coram Rege*  
 fol. 79. 8. *in Cancellaria*: Secondly, the Chan-  
 H. 4. fol. 5. cellor or Keeper of the Great Seal is  
 9 E. 4. f. 15. made by delivery of the Great Seal to him by the KING, and by taking of an Oath.

The Oath followeth in these Words.

1. *Well and truly to serve our Sovereign Lord the King, and his People, in that Office.*  
 41. pars in. fol. 88. 10. R. 2. rot. Parl. num. 8.
2. *To do right to all manner of People, Poor and Rich, after the Laws and Usages of this Realm.*
3. *Truly to Counsel the King, and his Councell to conceal and keep.*
4. *Not to suffer the hurt, or dishonouring of the King, or that the Rights of the Crown be decreased by any means as far as he may let it.*
5. *If he may not let it, he shall make it clearly and expressly to be known to the King, with his Advice and Counsell.*

6. *And*

6. *And that he shall do and purchase the Kings Profit in all that he reasonably may, as God him help, and the Contents of Gods Book.*

The said Commissioners among Declar. 17. others have Imprisoned their King, Jan. 1637. have declared to the Kingdom that they will make no Addresses or Applications to him, nor receive any from him.

Have Counterfeited a New Great Articul Seal, and after destroyed the true <sup>sup. Char-</sup> Old Great Seal which belonged by <sup>tas. c. 5.</sup> the Law to the Kings custody.

These Commissioners have had no Seal delivered to them by his Majesty, have taken no such Oath, or full ill keep it, and for these evident reasons grounded upon the Fundamental Laws of this Land, these Commissioners have neither Court, Seal, or Commission, and therefore I ought not against the Laws, against my Knowledge, and against my Conscience to submit to their Power.

To affirm that they maintain the Kings Power and Authority in relation to his Laws (as they often do) and restrain only his Person, is strange.

They

They must be remembered that the House of Commons this Parliament gave in charge to Mr. Solicitor upon the Prosecution of the Bill of Attainder against the Earl of Strafford, to  
**Mr. Solicitor** **Pag. 27.** declare the Law to be, *that Machination of War against the Laws or Kingdom, is against the King, they cannot be severed.*

**Mr. Pym. p. 16.** upon the same Prosecution to declare *That the King and his People are Obligated one to another in the nearest Relation, he is a Father, and the Child in Law is called pars patris, he is the Husband of the Common-Wealib, they have the same Interests, they are inseparable in their condition, be it good or evil; he is the Head, they are the Body, there is such an Incorporation as cannot be dissolved without the Destruction of both.* This agrees with our  
**20. H. 7. fol. 7.** Laws, and the Law of this Land:  
**8. H. 7. fol. 12.** In that argument of Mr. Solicitor, and discourse of Mr. Pym, directed  
**1. E. 5. fol. 3** by the House of Commons, are contained the true Rights, Liberties,  
**4. E. 4. fol. 25.** and Laws of the People, deduced  
**5. E. 4. fol. 29.** from our Ancestors in all Ages, and  
 wherein

wherein there is no Line or Word but is agreeable to the Laws, and is a necessary and useful Book to be Perused, and followed by all; which Book was Published by Order of the House of Commons. If the Doctrine of that Book had been followed, we had not been so miserable as we are; neither had these great evils ensued, for the which the Land mourns.

In this Month of *February*, six Years now past, the only Difference between His Majesty and the prevailing Party in both Houses, was touching the Power of the *Militia*, which in plain *English* is, Power over Sea and Land: This was the sole Quarrel: The King and his Progenitors have had it in all times, the Laws have fixed it upon them; they have used it for the Weal of the People: None of the Subjects ever had it or claimed it; the Laws deny it them; for the time they have had it, our Pressures have been miserable.

His Majesty hath a numerous Issue, and so hath his *Father*: many great persons of *England*, and *Scotland*

Collect of Ordinances, 1 pars, fol. 66, 67. 81.

*land* are of the Blood Royal, and all the Kings of *Christendom* are of the same Bloud, so long as the Laws last, or any of the said persons, or their Descendants be living, this People shall have neither Peace nor Profit; but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from him an Act of Oblivion, a General Pardon, assurance for the Arrears of the Souldiery, and meet satisfaction to tender Consciences.

*Febr. 12. 1647.*

By David Jenkins,

*Prisoner in Newgate.*

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THE  
ANSVVER  
OF  
Judge JENKINS,  
TO THE  
IMPUTATION  
PUT UPON HIS  
P L E A  
I N  
CHANCERY.

Which was read in open Court the  
14th. of *February*, 1647.

And avowed, By *David Jenkins*,  
Prisoner in *NEWGATE*.

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Printed in the Year 1647. And  
Reprinted in the Year 1681.







THE  
ANSVVER

OF

*Judge* JENKINS

TO THE

IMPUTATION

Put upon him in

CHANCERY.

**I** Have no Disposition, nor ever  
had, to be known by any publick  
Writing: These miserable times,  
which fill many Mens Mouths, and  
most Mens Ears, with notorious Un-  
truths, thereby to blast and destroy  
the

the Kings Sacred Majesty, his Laws and Government, and to bring in a confusion; enforceth me at this time (who formerly have written nothing but for the publick) to let the World know how unjustly the Pamphleter of this Week, Licens'd by our *Reformers*, hath traduced me, touching a suit commenced in their Court of *Chancery* against me, by one Mr. *Ernely* a *Wiltshire* Gentleman, touching the Estate of one Mr. *Thomas* of *Glamorganshire*: The truth whereof is as followeth:

Mr. *Thomas*, whose Father and my Grandfather were two Brothers, about seventeen years past made his Will, and declared by the same his Son (being then of very tender Years) a Ward to his Majesty, and made him Executor, and my self during his Minority, (referring to his Wardship) to Administer his Estate Personal and Testamentary, and to be accountable to his Son when he came to Age: And seventeen Years sithence the Father Died.

This Estate consists in a Stock of Sheep, so disposed by me as the number are yet continued, and for the number and condition, they were at their Delivery back, to be made as good by those Persons, who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Morgages of Land, forfeited in the Life of my young Cousin *Thomas*, for many of them, and many absolutely Purchased by me in his Name in his Life time, for the which I am not yet paid.

The Land descended, and ought, upon Sir *Edward Thomas*, my Cousins Heir at Common-Law; so that Mr. *Ernely*, the Plaintiff in *Chancery*, hath no colour for the Land: For my young Cousin dyed without Issue about seventeen Years old, and could not dispose of the Inheritance of any Land by any pretended Will: The Stock of Sheep remains, if the Pliantiff and the *Reformers* have not Plundered them: For the Money it came all to the Court, it was to satisfy the King for the Marriage.

K

The

This

The colour the Plaintiff hath, is this: After the Death of my old Kinsman Mr. *Thomas*, by undue means the young Gentleman was Married to Mr. *Ernelys* Daughter, in a way of Ravishment, being both Children, without one Penny paid, or consent of Friends or Kindred: For the which, a Suit of Ravishment depended against Mr. *Ernelys* and others in the Court of *Wards*.

The young Gentleman dyed about seventeen Years of Age, sithence these confusions, without Issue; and some hours before my young Cousins Death (who dyed of a pestilent Feavour) Mr. *Ernelys* pretends a Will made by him, and that he made his Wife (Mr. *Ernelys* Daughter) his Executrix: His said Wife dies soon after, and is pretended to make Nuncupative Will, and to make her Father (Mr. *Ernelys*) her Executor, and so pretends as Executor of an Executor of an Executor: Which pretended wills, he saith he hath proved in the Courts of his Friends the *Reformers*.

Whether

Whether such Wills were made or no, must receive an equal Examination, and of what validity they are, being pretended to be made by Children *in extremis*, if made at all? And whether an Executor of an Executor of an Executor can maintain an account by the Law of the Land? And whether (I being Executor during the Minority, *viz.* the Wardship) my young Cousin could make such a Will as is pretended, he being no Executor till his full Age.

The Age touching Wills, the Law of this Land determines to be 21 Years, and before that Age at Common Law an use could not be devised. For Wills touching Goods and Chattels, our Law for many Ages hath left the same to the decision of the Civil and Canon Laws, in the Bishops Courts: That Law, (as *Justinian* hath it in the second Book of his *Institutions*, the 12. chap.) is, *Impuberi non licet testari*: This *Pubertas* begins at 14. It is *plena pubertas* at 18. years of Age: The question is, whether this *jus testandi* is in *pubertate plena*, or *pubertate incepta*:

37.H.6.5.

21.E.4.24.

*Pigots Case*, 5. part of *Cooks Reports*, the Doctors affirmed, that 17 years of Age was a full Age as to an Infant Executor to dispose of Goods, this opinion hath been by others sithence denied. Sir *Edward Cook* 11 part, *instit. Sect.* 123. saith. He must be 18. which is the time of *plena pubertas*. 2. *Hen.* 4. 12. an Infant of 18 Years of Age may be a disseissour. Sir *John Dodderidge* in his Book called, *The Office and Duty of Executors*; which they say is his, and it is a Learned and Laborious *Treatise*, fol. 347. delivers, that this Opinion of 17 years, for that Ability in an Infant, hath been reported otherwise: This latter Opinion comes nearer the Common Law, and the Statute Law of the Land: Which Common Law, and Statute Law, gives Infants no Power by Deed or Will to make any disposition of any thing they have, before they be 21. years of Age.

It seems also more reasonable, because Infants at 18 years have, by the Intendment of Law, as they grow in years, more use of reason to discern what is fit for them to do and Act.

And

And for a meer stranger to sue in a Court of Conscience, who pretends by such Wills of Infants (the Infant Husband being Ravished) against the will of the kindred of the deceased, who dyed six Years sithence without Issue (being 17. years of Age) and that any part of his Estate should go that way by a course of Equity, unless the Law be for Mr. *Ernely*, who paid not a penny with his Daughter, and who would have the Husband of his Daughter bring him a Portion, by his pretended Title of an Executor of an Executor of an Executor, viz. of an Infant the Executor of another Infant, the Executor of a third Person, seems very strange.

The said Licensed Historiographer of theirs, hath published the 16 of this present Month of *February*, 1647. *That I out of a desire to keep the Estate have in a suit in the Court of Wards, in my Cousins life time, pleaded to the Jurisdiction of that Court.* It is true, I did so: For I conceived that the Estate would be unsafe in Mr. *Ernely's* hands, and I was willing to

preserve it till my young Couzin came to be of Age, to dispose of it himself, according as I was trusted.

32.H.8.c.  
46. 4.pars  
instit. fol.  
201, 202.

The Law being, that the Court of *Wards* hath no Jurisdiction over the personal Estate, for then the Marriage was payd for to the King, and all due to the King ascertained. It is true, that that was insisted upon, as was just, for to preserve the Estate from Mr. *Ernely*, who would have made what account he pleased to my Cousin at his full Age: And this is the truth of that business.

That I declined not the Jurisdiction of the *Chancery*, to keep an Estate in my hand, appears, by my declining long sithence the Power of the House of Commons to Examine me; and the Reformers have all my Estate: What would Mr. *Ernely* have, when they (the Reformers) have all already, or can have from me, if he had any colour?

I desire the Good People of this City to observe what notorious Untruths their Licensed Historiographers Publish to Delude the Peo-



People, in this particular case they Publish.

First, That *the Suit against me, is in the behalf of an Orphan* : Mr. Earnly (who is Plaintiff in their Court) is a *Wiltshire Gentleman*, at the least of 50. Years of Age, there is their *Orphan*.

Secondly, That *I made a Speech to the people at the Hall Door, that the questioning of me for what I had done for the King, was Illegal; and that the Judges had no power to try me, the King being absent* : Another notorious untruth ! For I protest to God all that I said was only this, *God preserve the King and the Laws*.

Thirdly, it is said that coming to the Bar, I stirred not my Hat : All the Lawyers then at the Bar were uncovered ; whereof I held it a civility, to be also Uncovered : And so I was, as they all know.

Fourthly,

Fourthly, That the *Earl of Manchester* should say, *I received a great Estate in Mony, of the Orphans Estate* : As there is no truth in it, so it is most untrue that the said Lord so said (as all Men present can testifie,) The truth is, they care not what they do, what they say, what they Swear, nor what they Write : Witness the Declaration of a prevailing Party of the House of Commons, of the 11th. of this instant *February* ; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their Solemn League and Covenant, their Declarations to make his Majesty a Glorious King, fearful to his Enemies, and Beloved of his Subjects ; and yet now, after 22. years, they would insinuate to the People, that this King, whom they have so much magnified, hath Poysoned his own Father.

Fifthly, It is a publick notorious untruth. That the *Parliament* hath published a Declaration against the King, of the 1st. of this instant *Febr.*  
whereas

whereas it is well known to be the Declaration of the prevailing Party of the House of Commons only, with-<sup>\*</sup> Their Li-  
out the Lords : And so they would censured Hi-  
make that Prevailing Party only to storiogra-  
be the <sup>\*</sup>Parliament. pher hath  
Published

Let the People of *England* believe this in the  
their five Senses how it was with Pamphlet  
them seven years ago, and before, called the  
during his Majesties Reign : How Kingdoms  
this Kingdom abounded then with Weekly  
Peace, Plenty, and Glory, to the Post, from  
admiration and envy of other Nati- *Wednesday*  
ons : And now let them consider Feb. 7. to  
and judge by their Senses, sithence *Wednesday*  
those Men (whom nothing would the 16. of  
satisfie, but all Power both by Sea Feb. 1647.  
and Land, which in truth is the  
Regality and Kingship, which they  
call the *Militia*) have Usurped the  
said Power Regal, whether they  
have not, by Impostures and Delusi-  
ons, diffused among the People by  
themselves and their agents, brought  
a flourishing Kingdom to the most  
deplorable condition it now is in.

To the end that this Kingdom  
may not utterly be ruined, God in-  
cline their Hearts to restore his Ma-

jefty, and for their own and their  
Posterities sake to receive from his  
Majesty an A&t of Oblivion, a Ge-  
neral Pardon, assurance for the Ar-  
rears of the Souldiery, and meet  
satisfaction for tender Conscien-  
ces.

DAVID JENKINS.

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Judge

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Judge JENKINS'S  
REMONSTRANCE  
TO THE  
LORDS  
AND  
COMMONS

The 21<sup>st</sup>. of *February*, 1647.

AT

WESTMINSTER,

I Desire that the Lords and Commons of the two Houses, would be pleased to remember, and that all the good People of *England* do take notice, of an Order of the House of Commons

Commons this Session, for publishing the Lord *Cook* his Bookes : Which Order they may find Printed in the last Leaf of the second part of his Institutes, in these Words:  
*viz.*

*Die Mercurij 12. Maij. 1641.*

**U**Pon Debate this Day in the Commons House of Parliament, the said House did then desire, and held it fit, that the Heir of Sir *Edward Cooke* should Publish in Print the Commentary upon *Magna Charta*, the Pleas of the Crown, and the Jurisdiction of Courts, according to the Intention of the said Sir *Edward Cook*; and that none but the Heir of the said Sir *Edward Cook*, or he that shall be Authorized by him, do presume to Publish in Print any of the foresaid Books, or any Copy thereof.

*H. Elsigne Cler.*  
*Dom. Com.*

And

And I do further desire them that they would read and peruse Mr. Solicitor Saint John, and Mr. Pym, their Books Published likewise this Session, whose Titles are as followeth, viz.

*An Argument of Law, concerning the Bill of Attainder of High Treason of Thomas Earl of Strafford, at a Conference in a Committee of both Houses of Parliament, By Mr. Saint-John His Majesties Solicitor Generall.*

*Published by Order of the Commons House.*

*And the Speech or Declaration of John Pym Esquire, after the Recapitulation or summing up of the Charge of High Treason, against Thomas Earl of Strafford, 12. April, 1641.*

*Published by the Order of the House of Commons.*

1. **N**Othing is delivered in Law in my Books, but what the House of Commons have avowed to be Law in Books of Law, Published by their command this Session, and agreeable to the Books of Law, and Statutes of this Realm, in all former Times and Ages.

2. The supposed Offence charged on me is against the two Houses, and none ought to be Judges and Parties, by the Law of the Land, in their own case.

3. I desire the benefit of *Magna Charta*, the *Petition of right*, and other good Laws of this Land, which ordain that *Mens Tryals should be by the established Laws, and not otherwise*. They are the very Words of the *Petition of Right*.

**I** Part. col. An Ordinance of both Houses is of Ordinance, fol. no Law of the Land, by their own Confession; and by the Books of the Lord Cook, Published by their Order, 728.2.pars as *aforsaid*, this Session, in six several 48.157, 153.4 pars places. instit. 23, 232.238.4. H.7.18.

For



For *Sedition*, in my Books there is none, but such as they have *Authorised to be Published and Printed*. To Publish the Law is no *Sedition*. These Positions following I do set down for the Law of the Land in my Books, and they themselves have justified, and avowed them as aforesaid; we agree the Law to be, and to have been in all times in all the Particulars following, as here ensueth.

1. To Imprison the King is High-Treason. 3 Pars inst. p.12.

2. To remove Councillors from the King by force is High-Treason. Mr. Solicitor p.12. 3 part inst. p.9.

3. To alter the Established Laws in any part by force is High-Treason. Mr. Pym p. 28. 3 part. inst. 3. 10. 12. 16.

4. To Usurp the Royal Power is High-Treason. 3 part inst. p.9.

5. To alter the Religion Established is High-Treason. Mr. Solicitor p. 3. 31. 36.

6. To raise Rumors and give out Words to alienate the Peoples Mr. Solicitor p 9.

Affe-

*Affections from the King is High-Treason.*

Mr. Sollici-  
tor P.9.

7. To Sess Souldiers upon the People of the Kingdom, without their Consent, is High-Treason.

Mr. Sollici-  
tor P.9.

8. The Execution of Paper Orders by Souldiers in a Military way, is High-Treason.

Mr. Sollici-  
tor P.24.

9. To Counterfeit the Great Seal, is High-Treason.

4. part inst.

p. 125.

Justice

Huttons ar-

gument;

fol.39,40.

4 part inst.

10. The Commission of Array, is in force, and none other.

11. None can make Judges, Justices, Sheriffs, &c. But the King: The King makes every Court.

2. part inst.

articul. su-

per char-

tas, cap.5.

12. The Great Seal belongs to the Kings Custody, or to whom he shall appoint, and none other.

1 par. Coll.

of Ordin.

& cook ut

supra.

13. Ordinances of one or both Houses are no Laws to bind the People.

14. *No Priviledge of Parliament, holds for Treason, Felony, or Breach of the Peace, not for Twenty Parliament Men, Forty, nor Three Hundred.* 4 p. inst. 2<sup>r</sup>.

15. *To Subvert the Fundamentall Laws is High-Treason.* Mr. Sollicitor p. 8. 70.

16. *To Levy War against the Person of the King is High-Treason.* Mr. Sollicitor p. 12. 27

17. *To perswade Forreigners to Levy war within this Kingdom, is High-Treason.* Mr. Sollicitor p. 26.

18. *To impose unlawful Taxes, to impose new Oaths, is High-Treason.* Mr. Sollicitor p. 35.

19. *The King can do no wrong.* Mr. Pim p. 8.

20. *It is a Pernicious Doctrine to teach Subjects, they may be discharged from the Oath of Allegiance. Then what means the Doctrine of both Houses of the Votes 11th. of Febr. 1647.* Mr. Pim. p. 17.  
21. A

Mr. Pym. p.  
24.

21. *A necessity of a Mans own making, doth not excuse him. The requiring and forcing of the Militia, brought the necessity of Arming upon the Houses.*

3. par. inst.  
p. 9.

22. *None can Levy War within this Realm without Authority from the King, for to him only it belongeth to Levy War, by the Common Law of the Land, to do otherwise is High-Treason by the said Common Law.*

Mr. Sollicitor 70, 71.  
4 part. inst.  
p. 1. 3. 4.  
4 pars inst.  
41. 356.

The only quarrel was and is the *Militia*: For the which so much Blood hath been spent, and Treasure.

23. *No Parliament without the King, he is Principium, caput & finis.*

24. *Presentment or Tryal by Jury, is the Birth-right of the Subject.*

There

There is no doubt but that many in both Houses are free from this *Great Sin*, and that most of the Prevailing Party, had at first no Intentions to proceed so far; but the madness of the People ( who are very unstable, and so they will find them ) and the Success of their Armies (having this great rich City to supply them with all Accommodations) have so elevated them, that the evil is come to this height.

For my self, to put me to Death in this cause is the greatest Honour I can possibly receive in this World. *Dulce & decorum est mori pro patriâ.* And for a Lawyer and a Judge of the Law, to die *Dum sanctis patriæ legibus obsequitur*; for Obedience to the Laws; will be deemed by the good Men of this Time, a sweet smelling Sacrifice; and by this, and future Times, that I Dyed full of Years, and had an Honest and Honourable End. And Posterity will take knowledge of those Men, who put some to  
Death

Death for Subverting of the Laws,  
and others for Supporting of them,  
&c.

*Bract. l. 3. c.*

*9. p. 107. 4*

*pars inst.*

*742, 343.*

*Stanford*

*99.*

Yet Mercy is above all the Works  
of God; *The King is Gods Vicar on*  
*Earth.* In *Bracton*, who was a Judge  
in *Henry 3.* time, you shall find the  
Kings Oath; *To shew Mercy*, is part  
of it: You are all his Children;  
say, and do what you will, you are  
all his Subjects, and *He is our King*  
and Parent: *Pro magno peccato pau-*  
*pulum supplicij satis est patri:* And  
therefore let not the prevailing Par-  
ty be obdurate, out of a desperati-  
on of safety: That which is past is  
not revocable: Take to your thoughts  
your Parents, your Wives, your  
Children, your Friends, your For-  
tunes, your Countrey; wherein  
Foreigners Write there is *Mira-*  
*aeris suavitas, & rerum omnium a-*  
*bundantia.*

Invite them not hither, the on-  
ly way to be free of their Company  
will be, *To restore his Majesty, and*  
re-

*receive from Him an Act of Oblivion,  
a General Pardon, Assurance for the  
Arrears of the Souldiery, and meet sa-  
tisfaction to tender Consciences.*

God Preserve the *KING* and  
the *LAWS*.

*DAVID JENKINS,*

Prisoner in

*NEWGATE.*

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*F I N I S.*

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